

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1476

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 77-1476

UNITED STATES OF AMERICA,
Appellee,

-against-

MANUEL FERNANDEZ,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NEW YORK

APPELLEE'S APPENDIX

DAVID G. TRAGER
United States Attorney
Eastern District of New York

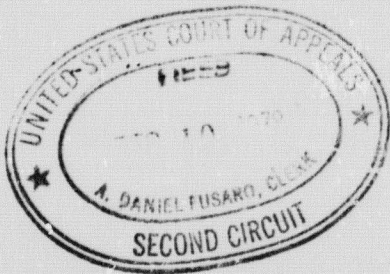


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PAGINATION AS IN ORIGINAL COPY

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

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4 -----X
5 UNITED STATES OF AMERICA, :

6 -against- :

7 JOSE GARCIA and :
8 MANUEL FERNANDEZ, :

No. 75-CR-736

9 Defendants. :
10 -----X

11 United States Courthouse
12 Brooklyn, New York

13 April 27, 1977
14 10:00 O'clock A.M.

15 B e f o r e :

16 HONORABLE MARK A. COSTANTINO, U.S.D.J.
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23

24 PERRY AUERBACH
25 Acting Official Court Reporter

APPEARANCES:

DAVID G. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: MARILYN GAINES, ESQ.,
Assistant U.S. Attorney

RICHARD ROSENKRANZ, ESQ.,
Attorney for Defendant Garcia

SAMUEL GILMAN, ESQ.,
Attorney for Defendant Fernandez

PA/LH
1/1a

1 MR. GILMAN: Your Honor, before you bring
2 the jury in, I'd like to be heard.

3 THE COURT: Yes, sure, you can be heard.

4 MR. GILMAN: Your Honor, two days ago when
5 we were selecting this jury I asked the Court for
6 an interpreter before, and the Court did furnish
7 an interpreter, and I'm advised by the Government
8 that because I'm privately retained an interpreter
9 will not be furnished.

10 I tell the Court now that I believe the
11 defendant, Manuel Fernandez cannot afford the services
12 of an interpreter, and I say further that unless
13 an interpreter is furnished I shall have some
14 difficulty communicating with him, and he shall have
15 some difficulty understanding the proceeding, and
16 it will be highly prejudicial to him.

17 THE COURT: I already anticipated that, and
18 I was going to ask this defendant to stand before the
19 Court and ask him questions. It's this Court's
20 impression that he has a fairly good working knowledge
21 of the English language. You have been before me before.
22 You know how I operate.

23 My eyes are all over. I may look like I'm
24 not looking, but you can bet your life nothing gets
25 by me, and I think that that gentleman understands what

1 we are saying here.

A 4

2 I want him to step up before me. I want to
3 ask him questions, some questions not pertaining to
4 the case, and I'll find out whether he can speak
5 English sufficiently enough.

6 MR. GILMAN: Maybe your Honor doesn't under-
7 stand what I said. I can't communicate with him'
8 because I don't understand him.

9 THE COURT: Well, we will find that out, too.
10 I think you can communicate with him, and I think
11 he knows what's going on, and I think that he's --
12 that his interpreter is something that he is seeking
13 now, and whether or not he's entitled to it is another
14 matter, but actually when he retains his own counsel
15 the rule is that he must retain any and all specialists
16 or anyone else that he wishes for his own defense.

17 I agree with you, and I will place it on the
18 record, that sometimes you're much better off being
19 an indigent person than an average citizen, income-
20 earning person, because you must go broke under our
21 assistance before you can get all of the experts that
22 are required to defend yourself, and I agree there's
23 something wrong with that, but that's not for me to
24 determine what's wrong with the system.

25 The only thing I must determine, what I must

1 deal with the case are what the issues are in the
2 case and how do I proceed with the jury, and then
3 when I do give it to the jury. That's my position,
4 and that's my judicial obligation.

5 Now, Mr. Fernandez, how long have you been in
6 this country?

7 DEFENDANT FERNANDEZ: Maybe in 1965.

8 THE COURT: 1965. And what have you been
9 doing since 1965?

10 DEFENDANT FERNANDEZ: Working.

11 THE COURT: What kind of work have you been
12 doing?

13 DEFENDANT FERNANDEZ: Well, I work for the
14 carpet.

15 THE COURT: And did you have any education?
16 Did you go to any schools in America while you were
17 here?

18 DEFENDANT FERNANDEZ: Well, I went in the
19 beginning a few --

20 THE COURT: You went to what?

21 DEFENDANT FERNANDEZ: In the beginning.

22 THE COURT: In the beginning you went a few
23 months to school. What kind of school did you go to?

24 DEFENDANT FERNANDEZ: I went to me, in my house.

25 THE COURT: Well, was it a grammar school, a

1 secondary school or a night high school?

2 DEFENDANT FERNANDEZ: No. Call the English,
3 the secon language or something.

4 THE COURT: English secondary?

5 DEFENDANT FERNANDEZ: Yes.

6 THE COURT: In other words, you were taught
7 the English language there?

8 DEFENDANT FERNANDEZ: Well, not very, very long.

9 THE COURT: In your job, did you talk Spanish
10 or English with your fellow employees?

11 DEFENDANT FERNANDEZ: I know of no employees.

12 THE COURT: Well, who did you work with?

13 DEFENDANT FERNANDEZ: I worked with some
14 American people.

15 THE COURT: And you talked English to them;
16 didn't you?

17 DEFENDANT FERNANDEZ: Well, I haven't had time
18 to understand.

19 THE COURT: He speaks a lot better English than
20 my mother did.

21 MR. GILMAN: Unfortunately, your Honor was never
22 in court --

23 THE COURT: At this time, the Court having
24 interrogated the defendant, the Court finds that he
25 speaks very, very well.

1 He responded and understood the nature of the
2 questions asked, and the Court will not permit him
3 to have a Spanish interpreter at the expense of the
4 Government.

5 DEFENDANT FERNANDEZ: Excuse me, your Honor.
6 Sometimes I have to repeat I have trouble to under-
7 standing.

8 THE COURT: Well, you will understand. We will
9 make sure. If you don't understand tell your lawyer,
10 and then we will repeat it for you.

11 Okay, all right.

12 (Whereupon, the jury entered the courtroom.)

13 THE COURT: We are now ready to start with the
14 trial, and first, I apologize for the delay, so to
15 speak, but there will be delays from time to time.
16 Just be patient and understanding. We will complete
17 the trial in its proper order, and within reasonable
18 time, and I'm certain that when it's all over with
19 that, you will have a better understanding of the
20 working of the Court and also the working of the
21 lawyers and also the problems that face the Court and
22 lawyers in expediting trials.

23 In any event, prior to the United States
24 Government, by its attorney, giving you an opening
25 statement, that will be the first thing that will

1 (Whereupon the side bar was concluded and
2 the following took place before the jury.)

3 MS. GAINNEY: Judge Costantino, Mr. Gilman,
4 Mr. Rosenkranz, ladies and gentlemen of the jury.
5 Once again, my name is Marilyn Gainney, I'm an
6 Assistant United States Attorney here in the Eastern
7 District of New York, and I will be presenting the
8 Government's case to you, as His Honor has told you.
9 And, I will tell you a little bit more of the details
10 of the charges against the defendant, Manuel Fernandez
11 and Jose Garcia. They are both charged with a conspiracy
12 to transport stolen goods, specifically antique
13 oriental rugs in interstate commerce, and the
14 conspiracy to conceal and receive these stolen items
15 once they had been transported in interstate commerce.

16 The defendants are also charged with having
17 transported and concealed these stolen items, these
18 antique oriental rugs, and my purpose here before you
19 is to give you a preview of what the Government intends
20 to prove to your satisfaction beyond a reasonable
21 doubt before the end of this trial.

22 Now, you will hear testimony that this whole
23 conspiracy, the transportation and the concealment of
24 these rugs came about as a result of the actual robbery
25 of these rugs from Kahn's Oriental Rug Store in

Opening-Gainey

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2 Princeton, New Jersey, and you will hear about various
3 meetings relative to the planning of the robbery and
4 the subsequent transportation and concealment of the
5 rugs that were gained by means of that robbery.

6 Specifically, you will hear about a meeting on
7 the morning of the robbery itself, May 6th, 1976, in
8 a bar in Brooklyn, and seven persons took part in that
9 meeting, were a part of that conspiracy.

10 You will hear their names: Vincent LaMorte,
11 Barry Miller, Joseph Schnitzer, Anthony Ferrante,
12 Chuck Johnson, and also the other two participants
13 in that meeting were the defendants, seated right
14 there, Manuel Fernandez and Jose Garcia.

15 At that meeting, detailed plans were made for
16 robbing this drug store in Princeton, and for thereafter
17 transporting the drugs back to Brooklyn and concealing
18 them in Brooklyn.

19 You will learn that the people at that meeting
20 took part in that agreement, and in that planning
21 played various rolls. They were the people who
22 organized the robbery, but didn't actually do the
23 dirty work itself, and the people who were the "drums,"
24 so to speak, the robbers themselves who were going to
25 take part in the robbery in New Jersey and bring the

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1 drugs back.

2 You will hear that the mastermind here was that
3 defendant, Manuel Fernandez.

4 Remember I told you that this case involved
5 stolen antique oriental rugs. Not your ordinary
6 everyday market items. People who deal in antique
7 oriental rugs have specific knowledge, and there's
8 only a select market for these items, and you will
9 learn that Manuel Fernandez is quite knowledgeable
10 about the rug business, and that he has many contacts
11 in the oriental rug business.

12 So, his role was, and what he in fact did, he
13 did what we call in the street vernacular, fingered
14 the job in New Jersey. That is, he told the others
15 where to go to rob the rugs, where they could find
16 quality goods, and the plan was, they were thereafter
17 to bring the rugs back to Brooklyn, to Fernandez and
18 others, and he would -- again in the vernacular --
19 fence the rugs; that is, he would have buyers for
20 those oriental rugs, because remember, we are talking
21 about a select market here, and of course each one
22 would share in the proceeds from the sale of these
23 goods according to the respective duties they had,
24 according to where they fit in the organization of
25 the scheme.

1
2 Now, what was the defendant, Jose Garcia's
3 part? He was one of the actual robbers, and you
4 will hear testimony about how he participated in the
5 robbery of Kahn's Oriental Rug Store in New Jersey
6 and how he actually was the one who drove the truck
7 that was used to transport the rugs from Princeton
8 back to Brooklyn.

9 Now, remember, we are dealing with a
10 conspiracy here, and you might say to yourselves,
11 "well, Manuel Fernandez did not actually participate in
12 the robbery."

13 Well, the charge here is not robbery, it's
14 the conspiracy to transport and conceal the rugs, and
15 the actual transportation and concealment of those
16 rugs, and Manuel Fernandez is charged by way of being
17 an aider and abettor to those actions, and I will not
18 go into the law on that. That is His Honor's province.
19 But, listen carefully, after this case is concluded
20 as to His Honor's charge as to the law of conspiracy
21 and the law of aiding and abetting.

22 So, you have the set up. You have the roles.
23 Fernandez was the organizer, he fingered the job.
24 He was to fence the goods.

25 Now, I mentioned another individual there by

1 the name of Tony Ferrante. He had a specific role
2 also. He got the robbery crew together. He knew
3 Fernandez. Fernandez fingers, Ferrante gets the
4 crew together. One of the members of the robbery
5 crew that got together was Jose Garcia, and you will
6 hear about his role in the participation of the
7 robbery and the transportation of the rugs.

8
9 You won't hear that anyone was caught in the
10 act of this robbery, because it was a successful
11 operation. You won't hear about anybody's finger-
12 prints, specifically not the defendant, Manuel
13 Fernandez's because he wasn't in on the robbery. He
14 does not do the dirty work. He organizes.

15 So, you may say to yourself, "Well, how does
16 the Government intend to prove its charges against
17 these people beyond a reasonable doubt?"

18 Ladies and gentlemen, we are going right to
19 the horse's mouth, so to speak. You will hear the
20 testimony of one of the actual participants in that
21 meeting, in the robbery, in the transportation of the
22 rugs.

23 I mentioned his name before, Vincent LaMorte.
24 That is the first witness the Government will bring
25 before you. Vincent LaMorte will come before you having

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2 pled guilty to the very charges for which this
3 defendant, these defendants rather are presently
4 standing trial.

5 Vincent LaMorte is presently awaiting sentencing
6 under that conviction, and where you don't have people
7 caught in the act, many times the only way that these
8 crimes are solved, and this one in particular --

9 MR. GILMAN: Excuse me, your Honor. I dislike
10 disrupting this court, but what happens many times,
11 I believe, is not really part of this case. Your
12 Honor, what happened here --

13 THE COURT: These are just the words.

14 MS. GAINNEY: In this particular case you will
15 learn that this crime was solved, because there are
16 only certain people who could furnish information
17 about the successful operation; the participants
18 themselves.

19 So, we are going right to the horse's mouth.
20 So, you will hear about the meeting, the conspiracy,
21 about the robbery and the transportation and conceal-
22 ment of these items, and remember when His Honor was
23 giving you instructions as you were selected for
24 the jury he told you you were not to come here with
25 any preconceived notions about any witness who might

1
2 appear before you, because of their status that they
3 were not to be given any lesser or greater weight than
4 their status did not control, but what they had to say,
5 and I ask you to listen to Vincent LaMorte. See
6 whether or not he has any motive to lie. See whether
7 or not he knows what he's talking about. Ask your-
8 selves does what he is saying make sense to you or
9 doesn't it. Does it agree with your own common sense
10 or does it not, because I would ask you as you listen
11 to each witness, not just Vincent LaMorte, but each
12 and every one, to bring your God given common sense
13 here, your everyday experiences in judging people when
14 you judge these witnesses who testified before you.

15 Now, another witness who will come before you
16 was the victim of the robbery itself, a woman by the
17 name of Marianne LaRiche. Now, Marianne will not be
18 able to identify any of the robbers, and you will hear
19 her testimony as to why not. But, she does neverthe-
20 less give important evidence to you as to the details
21 of the robbery that eventually resulted in the transporta-
22 tion and the concealment of the rugs.

23 Listen carefully to her testimony. Weigh it
24 against the testimony of Vincent LaMorte. See if
25 what she says makes sense. See if what Vincent LaMorte

1
2 says makes sense as compared to what she says. See
3 if they know what they are talking about.

4 And finally, you will hear details of the
5 investigation by the FBI that led to the solving of
6 this entire scheme, and after you have had the various
7 witnesses before you, I will come back to you and ask
8 you to find the defendants, Manuel Fernandez and Jose
9 Garcia guilty as charged.

10 Thank you.

11 MR. GILMAN: May I consult with Mr. Rosenkranz
12 for a moment, your Honor.

13 THE COURT: You may.

14 MR. ROSENKRANZ: Judge Costantino, Ms. Gainey,
15 Mr. Gilman, ladies and gentlemen of the jury. My
16 name is Richard Rosenkranz, and I represent the
17 defendant Jose Garcia, and although a defendant has
18 no obligation to do anything during the trial, especially
19 he has no obligation to make an opening statement, I
20 still feel it's my obligation at this time because of
21 what Ms. Gainey has said to answer some of the things
22 that she said.

23 It's wonderful how the Government can take what
24 is really a weak, insufficient case and make it seem
25 like it's a very strong case by turning a few well

R1C

V I N C E N T F R A N K L A M O R T E , having
first been duly sworn by the Clerk of this
Court, was examined and testified as follows:

THE CLERK: State your name for the record,
please,

THE WITNESS: Vincent Frank LaMorte.

THE CLERK: Spell your last name.

THE WITNESS: L-a M-o-r-t-e.

MR. GILMAN: What did he say his name was?

THE COURT: Frank LaMorte.

DIRECT EXAMINATION

BY MS. GAINNEY:

Q Would you state your name for the record, please?

A Vincent Frank LaMorte.

Q And how old are you, Mr. LaMorte?

A 44.

Q And have you ever been married, sir?

A Yes.

Q How many times?

A Twice.

Q And how long have you been married on the
second occasion?

A Been 18 years in July.

Q Do you have any children?

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A Yes, I do.

Q And what are their ages?

A My daughter is 11 years old, and my son is
10 years old.

Q Now, could you tell us what education you have
had, Mr. LaMorte?

A I graduated Textile High School.

Q When was that?

A In 1951, then I took a one year postgraduate
course in commercial art also at the same school.

Q And could you tell us what type of work you
have done since you left school in '51 up to the present?

A I've done mail clerk work, and direct mail,
sales, I operated elevators, truck driving, and the past
four years I was involved with a flea market work.

Q By the way, are you known by any other name
or nickname?

A Yes. They call me Sonny, and Conte.

MR. ROSENKRANZ: I can't hear.

THE COURT: What was that?

THE WITNESS: Sonny and Conte, C-o-n-t-e.

MR. ROSENKRANZ: Like the actor?

THE WITNESS: Like the actor.

MR. ROSENKRANZ: Thank you.

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THE WITNESS: You're welcome.

Q Have you ever been convicted of a crime,
Mr. LaMorte?

A Yes, I have.

Q Could you tell us when and what crime?

A In 1958 I was convicted of attempt robbery three,
and I was put on five years probation. In 1958 I was
convicted on burglary, which was broken down to criminal
trespass, and I served four months in Riker's Island.

Q When you say it was broken down, did you there-
after plead not guilty to criminal mischief?

A I pleaded guilty to criminal trespass.

Q Criminal trespass?

A Yes, Ma'am. In 1973 I was also convicted of
burglary, which was also a felony, and I was placed on
five years probation.

Q Now, Mr. LaMorte, in January of 1977, were
you also convicted by way of your plea of guilty to conspiracy
to receive stolen property?

A Yes, I was.

Q And have you been sentenced on that charge yet?

A Not yet, Ma'am.

Q And could you tell us what that stolen
property involved was?

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A Well, it was all oriental rugs.

Q Now, did your conviction for conspiracy to possess or rather to receive this stolen property come about as a result of a robbery that you participated in with others on May 6th, 1976 of Kahn's Oriental Rugs Store in Princeton, New Jersey?

MR. GILMAN: Excuse me, your Honor. Isn't that a little bit of a leading question? I object.

THE COURT: No, it's not leading. We are going to get to it eventually. Anyway, I'll allow it. Maybe a little bit more short circuit, but that's all right. Go ahead.

A Yes. In fact, it was.

Q And were you and others subsequently arrested in actual possession of those rugs on May 8, 1976?

A Yes, they were.

Q As a result of your arrest on May 8th, 1976, did you thereafter agree to cooperate with the Government?

A Yes, I did.

Q And could you tell us when you --

MR. GILMAN: Did you say '76?

MS. GAINES: Yes.

THE COURT: May 8th, 1976.

1
2 Q And as a result -- withdrawn.

3 When did you first begin cooperating with the
4 Government?

5 A It was just after my arrest at the liquor
6 store where the drop was being made for the rugs.

7 Q Would you explain what you mean by "drop"?

8 A Well, the rugs were stored in one drop, in
9 Brooklyn on Adelphi Street, and I was discussing with Tony
10 Ferrante to help him remove it from that --

11 MR. ROSENKRANZ: Objection to what Ferrante
12 said to him.

13 THE COURT: Yes. He may not say --

14 MS. GAINES: Your Honor, I submit it's a state-
15 ment made in furtherance of a conspiracy.

16 THE COURT: We are not to that point at this
17 point. He may say as a result of the conversation
18 at the time what he did.

19 Q In other words, is a drop where a place where
20 stolen property is concealed?

21 A Yes, Ma'am.

22 Q Now, to go back to my last question, you stated
23 that you first began to cooperate with the Government shortly
24 after you were arrested; is that correct?

25 A Yes, Ma'am.

1
2 Q At that particular drop.

3 Now, what specifically -- withdrawn.

4 What was the nature of the agreement that
5 you had with the Government with reference to you cooperation?

6 A Well, that --

7 MR. ROSENKRANZ: What was the question?

8 THE COURT: Nature of the agreement he had
9 with the Government as far as cooperation is concerned.
10 Nothing wrong with that. Go ahead.

11 You may answer it. You may answer.

12 A First of all, that my wife and my two children --

13 MR. ROSENKRANZ: Your Honor, I'm going to object.
14 May we approach the bench?

15 THE COURT: Yes. I don't think we are talking
16 about that at this time.

17 MR. GILMAN: I want to object too, your Honor.

18 (Whereupon, a side bar was had outside the hearing
19 of the jury.)

20 MR. ROSENKRANZ: I'm going to object to any
21 statement about witness concealment, change of name
22 or anything to indicate --

23 MR. GILMAN: Or picture.

24 MR. ROSENKRANZ: May I finish. Or anything
25 to indicate this witness has anything to be afraid of

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2 by giving his testimony in court. Unless it's
3 brought out somewhere in cross-examination that makes
4 it relevant at that point.

5 MS. GAINNEY: Your Honor --

6 MR. GILMAN: May I make an objection, sir.

7 THE COURT: Yes. All right.

8 MR. GILMAN: Can I object strongly that any
9 reference to protection being offered to this man's
10 wife and children, to protect them from so-called
11 assaults or intimidation.

12 MS. GAINNEY: I would therefore ask that if your
13 Honor grants their movement, that there be no reference
14 made to any monies he receives from the Government,
15 because the only monies he receives is with the witness
16 protection program.

17 THE COURT: If they ask that question --

18 MS. GAINNEY: Then they open the door.

19 THE COURT: Then you come back on redirect.

20 MR. GILMAN: Are you telling me now that -- are
21 you telling us now that the giving of the money has
22 to be tied up?

23 THE COURT: If he is receiving assistance from
24 the Government for the purpose of being protected, then
25 the right to show the money --

LaMorte-direct

MR. GILMAN: What was it for? To support the family? Not to protect him.

THE COURT: Anything else that goes with it.

MS. GAINNEY: That's on the program.

THE COURT: Once that door is opened it runs right in.

MR. ROSENKRANZ: Your Honor, I would ask to be given whatever documents there are to indicate how much money there is, so that we can make our own determination.

MS. GAINNEY: I can tell you how much money it is.

THE COURT: Tell him.

MS. GAINNEY: I don't have documents.

THE COURT: Tell him.

MS. GAINNEY: He received \$910 a month.

MR. GILMAN: For how long?

MS. GAINNEY: Until he finishes testifying and/or gains employment.

MR. GILMAN: Wait a minute, excuse me, your Honor please. May I ask her a question, sir?

MS. GAINNEY: Do you want me to testify about this?

MR. GILMAN: May I ask the Court's permission?

1
2 Do you intend to have him testify that he's being
3 relocated under a new name?

4 MS. GAINNEY: I will stop that testimony.

5 THE COURT: She's stopping it until such time
6 of cross-examination, if it's brought out, then she
7 has a right. You can't have it both ways. That's
8 part of the agreement, you see.

9 MR. ROSENKRANZ: Can we finish this?

10 MR. GILMAN: Suppose it's another part of the
11 agreement.

12 MR. ROSENKRANZ: Could we go into this?

13 THE COURT: You can go into the agreement, the
14 promises, what was known to the Judge, and that she's
15 going to ask him anyway. But, once you ask him whether
16 he's being paid an amount of money I tell you that
17 she will have a right to go into the full agreement
18 of protection.

19 MR. GILMAN: I'm not talking about money now.
20 I'm talking about what else she promised him.

21 THE COURT: Whatever he says, if you open the
22 door on an answer to one of your questions.

23 MS. GAINNEY: There is only one.

24 THE COURT: You see, you have one problem as
25 an advocate. I can't play lawyer.

1
2 MS. GAINNEY: I have gone over the whole agree-
3 ment with him as I promised, and I have told him to
4 tell it all, and I'm afraid that --

5 THE COURT: Well, I think we should take a
6 short recess at this time and make sure that he knows
7 about the protections, and any way, leave that out
8 at this point. But, anything about cooperation letting
9 be known to the Judge, you can talk about.

10 MS. GAINNEY: Okay.

11 THE COURT: I think at this point --

12 MR. ROSENKRANZ: Your Honor, I think I would
13 ask your Honor to reconsider the fact that we should
14 be able to go into the amount of money that's been
15 given, \$900 a month.

16 THE COURT: No. If some evidence comes before
17 the jury all of it goes before the jury. That's the
18 Federal practice, you can't change that. Okay, we
19 will take a short recess at this point.

20 (Whereupon, the side bar was concluded and
21 the following took place before the jury.)

22 THE COURT: We will take a very short recess
23 at this time, and I will bring you back in.

24 (Whereupon the jury left the courtroom.)

25 THE COURT: All right, you can talk to him now.

LaMorte-direct

We will take a five minute recess. I'll be out in five minutes.

(Whereupon a recess was taken at 12:30 p.m.)

(Whereupon Court reconvened at 12:40 p.m.)

THE COURT: All right, bring him in.

(Whereupon the witness resumed the stand.)

THE COURT: All right, bring in the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right, we are ready to start.

CONTINUED DIRECT EXAMINATION

BY MS. GAINNEY:

Q Mr. LaMorte, as part of your cooperation with the Government, could you tell us what you agreed to do for the Government?

A Testify in this case in particular, for the Federal Government.

Q And also as part of that agreement, did you agree to furnish any information with respect to any other criminal activity of which you were a part of or aware of?

A Yes, I did.

Q And what promises has the Government made to you in return for your cooperation, if any?

A That they would make known to the sentencing judge that any voluntary information which I gave, and all

R2

1
2 information which I gave -- in other words, you people would
3 step forward and mention to the Judge and perhaps help me
4 in the sentencing.

5 Q Did the Government make any promises to you
6 as to what sentence you would receive?

7 A None whatsoever.

8 Q And also, were you promised by the Government
9 other than for this particular case for which you have pled
10 guilty, ^{that} that you would not be prosecuted on any other charges
11 about which you gave information?

12 A Yes, they did make that promise.

13 Q And are you aware of the maximum sentence you
14 could receive for that charge which you stand convicted?

15 A Yes, I am.

16 Q And what is that?

17 A Five years.

18 Q Now, Mr. LaMorte, going back to the robbery
19 of Kahn's Oriental Rug Store in Princeton, New Jersey on
20 May 6, 1976 that you participated in, did anyone else
21 participate in that robbery with you?

22 A Yes, there were. There was Tony, Barry, Chuck,
23 Jose and myself.

24 Q Now, have you -- do you know the last name of
25 Tony?

A28

1

2

A Yes. Ferrante.

3

Q What about Chuck?

4

A I did learn his name -- Johnson. Chuck Johnson.

5

Q And Barry?

6

A Barry Miller.

7

Q And Jose?

8

A Jose Garcia.

9

Q Would you look around the courtroom and see if

10

you see any of those individuals here in court today?

11

A Yes. Jose Garcia is sitting in the far end

12

of the table over there.

13

MS. GAINES: Indicating the defendant, Garcia.

14

Q Would you indicate which man he is?

15

THE COURT: The man at the far end of the

16

table.

17

MR. ROSENKRANZ: I have no --

18

THE COURT: That's Jose Garcia?

19

THE WITNESS: Yes.

20

THE COURT: All right, that's him.

21

Q Now, would you describe the individuals other

22

than yourself and Mr. Garcia who participated in that robbery

23

on that day? First, beginning with Anthony Ferrante?

24

A Well, Tony, I know. I was introduced to him

25

by Mr. Schnitzer. He's about five feet nine, about 160 pounds,

1 straight hair, short set of teeth.

2 Q About what age?

3 A About 50, 51.

4 Q What about Barry Miller?

5 A Barry was about six foot, very slim built,
6 bushy hair, mustache, dark hair, black hair. very slim,
7 slim individual.
8

9 Q And what about age?

10 A Anywhere from 25 to 30.

11 Q What about Chuck Johnson?

12 A Chuck was about five nine, five ten, maybe
13 about 200 pounds, had light blond hair, mustache, scar on
14 his chin. Always dressed work clothes.

15 Q Could you tell us how each of you were dressed
16 during the robbery on May of 1976 at Kahn's Oriental Rug
17 Store?

18 A We had all just about work clothes, half jackets.
19 I had work dungarees that day. Garcia had a perforated jacket
20 on, dungarees, I believe also, with rubber sole shoes that
21 day in particular.

22 MR. GILMAN: Your Honor, would your Honor
23 caution the witness to speak in the microphone so I
24 can hear him, too, please?

25 THE COURT: All right.

LaMorte-direct

1
2 Q Could you tell us whether or not any of you
3 were wearing gloves on that occasion during the course of
4 the robbery?

5 A Ferrante was wearing gloves at all times.
6 Barry and Chuck were given a pair of gloves, as was I, and
7 for some apparent reason we didn't use the gloves. It looked
8 to suspicious. It was a sunny day that day, and I guess we
9 didn't want to wear any gloves to show anybody.

10 Barry had a pair of driving gloves that I
11 know of, leather driving gloves.

12 Q What about the defendant Jose Garcia?

13 A I didn't really take notice of -- if Mr. Garcia
14 had any gloves on at the time. I think he was given a pair
15 of gloves, but I was surprised to see that he was there when
16 we started unloading the rugs into the truck.

17 Q Now, could you tell us the circumstances and
18 events that led to the robbery of Kahn's Oriental Rug Store
19 on May 6, 1976?

20 A Well, we met in a bar on Washington Avenue
21 and Flushing Avenue.

22 Q Who was with you?

23 A Tony and I drove up, and -- Tony Ferrante,
24 in his car, and we met Chuck and Barry, who were in the
25 restaurant having coffee. We waited there for a while,

1 because the bar was closed, and about 10:00 o'clock the bar
2 opened and we went across the street into the bar.
3

4 At that time we sat down and we waited for a
5 few minutes and Manuel, who is sitting here in the blue suit,
6 came in with Joe Schnitzer.

7 Q Now, have you since learned Manuel's last name?

8 A Yes. Hernandez.

9 DEFENDANT FERNANDEZ: What?

10 A Hernandez -- I'm sorry, Fernandez.

11 Q Continue to tell us about the meeting in the
12 bar?

13 A Well, we sat down and started -- we really
14 didn't say much until Manuel came in with Joe Schnitzer, and
15 then Jose came in, and Tony had given Barry the driver's
16 license to go to pick up the truck.

17 Q Now, is Joe Schnitzer known by any other name?

18 A They call him Joe the Jew.

19 Q Speaking of the morning of May 6, 1976, had
20 you ever met the defendant Manuel Fernandez prior to that
21 occasion?

22 A Yes. Several occasions.

23 Q Could you tell us the first time that you ever
24 saw Manuel Fernandez?

25 A The first time I met him was at the Castillion

Room.

Q And what was that?

A It's a bar and restaurant type of place.

Q Where is that located?

A In Midtown, New York, in the Mid-50's. I went there with Tony and Joe Schnitzer. We met Manuel that night in the bar. He was with a young lady.

Q And when was the next time that you saw Manuel Fernandez?

MR. GILMAN: Excuse me, was there a date given for that, your Honor.

Q I'm sorry, I'll withdraw that question, and I would ask you approximately when was that meeting in the Castillion Room?

A Well, it was very cold, I remember. I think it was around in February. It was a cold, cold night. I remember that.

Q Was that February of 1976?

A 1976.

Q And who introduced you to Manuel Fernandez on that occasion?

A Joe Schnitzer.

Q Now, when is the next time that you met or saw Manuel Fernandez?

LaMorte-direct

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1
2 A Well, he came to the Club one night, Sons of
3 Italy Club with Joe Schnitzer.

4 Q And where's the Sons of Italy Club located?

5 A It's on Myrtle Avenue right off Washington.
6 There's an Italian Restaurant a couple of doors down from
7 the Club.

8 Q Are we speaking in Brooklyn?

9 A Brooklyn. And Joe Schnitzer, Tony and myself
10 went into the restaurant, and we had dinner. We ate dinner
11 there.

12 Q Did any conversation take place at that time?

13 A He was discussing that he had something very
14 good for us.

15 Q Who was "he"?

16 A Manuel.

17 Q And what was he talking about?

18 A Rugs.

19 Q And could you tell us what he said?

20 A He told us that he had something that would very
21 good, that could possibly make a lot of money, that I had
22 asked him at that time, I said, think I mentioned to him, you
23 know, "Are you sure you can dump this stuff?" And he said,
24 "No problem."

25 Q What did you mean by "dump the stuff?"

LaMorte-direct

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A Get rid of it. Sell it. Get money for it./

3

Q And what did he reply?

4

A That he could take care of everything. He

5

had the connections. No problem getting rid of the stuff.

6

He had the buyers for it.

7

Q And did he mention any specific place where

8

the rugs were to be gotten at?

9

A That particular instance he mentioned quite

10

a few.

11

MR. GILMAN: I'm going to object, your Honor.

12

Unless what this witness is talking about concerns

13

this incident, I'm going to object to the testimony.

14

MS. GAINES: If counsel will allow me to finish.

15

MR. GILMAN: I don't hear you.

16

MS. GAINES: It will be connected, Mr. Gilman.

17

THE COURT: I'll allow it.

18

A I'm sorry, could you repeat that again?

19

Q Did he mention any specific location as to

20

where the rugs could be gotten from?

21

A Yes. There was in Jersey -- quite a few places

22

in New Jersey which we -- the following day we met, and we

23

took a ride to New Jersey. We went to quite a few of them.

24

We passed quite a few places in Jersey.

25

Q Now, going back to that meeting at the

LaMorte-direct

1
2 restaurant on Myrtle Avenue, could you tell us what point
3 in time this meeting took place?

4 A This was in February, around February 10th
5 in the evening, late in the evening around 8:00 o'clock,
6 9:00 o'clock. 8:00 o'clock.

7 Q Not of the Castillion meeting?

8 A No. This is in the restaurant of the Sons of
9 Italy Club in Myrtle Avenue.

10 Q Did there come a time when you met with Manuel
11 Fernandez?

12 A Yes.

13 Q When was this?

14 A The morning of the robbery.

15 Q And where did this meeting take place?

16 A On -- in the bar in Myrtle -- on Flushing
17 avenue and Washington Avenue in Brooklyn.

18 Q And could you tell us what was discussed at
19 that time?

20 A Well, the -- he had given the location and
21 -- to Tony, as to where --

22 MR. GILMAN: I object to this, your Honor,
23 unless this was in the witness' presence.

24 (Continued on next page)
25

1
2 THE COURT: Yes.

3 MR. GILMAN: Ask it be stricken.

4 THE COURT: You were there, sir?

5 THE WITNESS: Yes.

6 THE COURT: He said he was there.

7 MR. GILMAN: I can't hear you.

8 THE COURT: He said he was there, all right.

9 THE WITNESS: I was at the bar also when the
10 information was given to Tony Ferrante as to the
11 location of where this particular score was to take
12 place.

13 BY MS. GAINES:

14 Q What do you mean by "a score?"

15 A Stick up, a robbery.

16 Q And what was supposed to be robbed?

17 A Oriental rugs.

18 Q And did Fernandez tell Ferrante what the
19 location was to be?

20 A Yes. He explained the whole thing, and even
21 had a little paper where the location of the rugs would be
22 located in the store, and mainly not to forget to take the
23 rugs that were in the safe.

24 Q Did he state where the store was at, meaning
25 Fernandez?

1
2 A Yes. They had gone there prior to this meet-
3 ing here, Tony, Schnitzer and Manuel had gone to the store.

4 MR. GILMAN: If your Honor pleases, ask it
5 be stricken unless he was there,

6 Q How do you know that they had gone there?

7 A Because the next day when Tony took us to
8 the bar he knew exactly where he was going.

9 MR. GILMAN: I object and ask it be stricken.

10 THE COURT: Do you know of your own knowledge
11 that they went there?

12 THE WITNESS: Yes, sir.

13 THE COURT: One of them told you?

14 THE WITNESS: That night I was supposed to go,
15 but I didn't go with them. They went themselves.

16 MR. GILMAN: I ask that it be stricken.

17 THE COURT: No, I'll allow it.

18 MR. GILMAN: Did your Honor strike it?

19 THE COURT: No, I'll allow it. It is admissible.

20 All right.

21 Q And were you told the location of the store?

22 A That they had a robbery, no, and I still didn't
23 know where it was. I found out that it was in Princeton,
24 but I didn't know exactly what location the store would be
25 located in.

1
2 Q Was the name of the store mentioned at that
3 time?

4 A Yes. Manuel had mentioned the name, it would
5 be Kahn's Oriental Rugs.

6 Q And did he indicate anything about any of the
7 employees or owners of that establishment?

8 A Yes. He told me it was a very good friend
9 of his. He knew the gentleman very well.

10 Q And did he mention the gentleman by name?

11 A Yes. He said Mr. Kahn.

12 Q Now, could you tell us at that time what
13 plans were made, if any, with respect to robbing Kahn's
14 Oriental Rug Store?

15 A Well, he explained to us that there would
16 be two people in the store.

17 Q Who explained?

18 A Manuel.

19 Q By the way, where was Jose Garcia at this time?

20 A He was sitting in the bar with us. He told us
21 that there would be two people, a man and a woman, and that
22 there would be no problems. It would be very easy, you know,
23 that he doubted very much if they would put up any resistance
24 to us.

25 Q And were any specific plans made as to who was

1
2 to do what during the course of the robbery?

3 A Yes.

4 Q And who gave those instructions?

5 A Mr. Ferrante.

6 Q And what was stated then?

7 A Well, he -- in the bar he said that Chuck and
8 Barry would make the in.

9 Q What is meant by "make the in"?

10 A Well, they would make the initial entrance
11 to the store and take care of the two people that were in
12 there, you know, tie them up and handcuff them and tape
13 their mouths and eyes before we get into the store, and then
14 I would follow in five minutes later, give him five minutes
15 to do all this here, and then I would walk into the store
16 and after that -- and Jose would back the truck up to the
17 door, and Tony was supposed to come into the front, but he
18 eventually came to the back door with Jose.

19 Q Sticking with what was stated at the bar at
20 that time, what truck are you speaking of?

21 A It was a step-van.

22 Q Could you describe it, please?

23 A Yeah. It was about -- I don't know -- maybe
24 a 12 footer, 14 footer step-in type, yellow and -- yellow
25 top and orange body, and it had -- Tony had said it would be

1
2 a good thing to do, because it said "Long Island Carpet
3 Cleaning" on it, and nobody would suspect the truck.

4 Q And did you actually see the truck?

5 A Sure

6 Q And what truck used to drive to Jersey,
7 and thereafter transports these rugs back to Brooklyn from
8 Jersey?

9 A Yes, it was.

10 THE COURT: All right, it's time to recess
11 at this point.

12 Okay, luncheon recess. Be back at 2:15.
13 We will start at that time.

14 (Whereupon the jury left the courtroom.)

15 THE COURT: 2:15.

16 (Whereupon a luncheon recess was taken at
17 1:00 o'clock p.m.)
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PA/LH
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LaMorte-direct

AI 41

V I N C E N T F R A N K L A M O R T E , having
previously been duly sworn, resumed the stand,
and testified further as follows:

DIRECT EXAMINATION

BY MS. GAINNEY:

Q Mr. LaMorte, I believe before the lunch break
we were at the point where you were describing the truck
that had been used to transport the rugs from New Jersey
to Brooklyn.

Now, I show you Government's 1 for identifica-
tion, a photograph, and ask you if you recognize what is
depicted in that photograph (handing to witness)?

A Yes. This is the same truck that we used in
the robbery.

MS. GAINNEY: Your Honor, at this time I
would offer this as Government's Exhibit 1, first
showing to counsel.

(Whereupon, the photograph was shown to
defense counsel.)

MR. GILMAN: No objection.

THE CLERK: Government's Exhibit 1 for
identification received in evidence.

(So marked.)

1
2 BY MS. GAINNEY:

3 Q Now, I believe you also stated prior to the
4 lunch break that Jose Garcia was the one who had driven that
5 truck; is that correct?

6 A Yes, Ma'am.

7 Q By the way, did you know where Jose Garcia
8 lived?

9 A I just knew that he lived in New Jersey, because
10 he had Jersey plates on the car.

11 Q Had you seen prior to May of 1976, had you
12 ever seen Jose Garcia?

13 A Yes, Ma'am.

14 Q Under what circumstances?

15 A Well, I knew him through the Club, The Sons of
16 Italy. I used to see him in there playing cards.

17 Q With whom would he be playing cards at the
18 time you would see him?

19 A Well, there were several people. He would
20 play with Tony Ferrante and a few other boys in the club.

21 Q Now, while you were in the bar that day, and
22 prior to leaving for New Jersey, could you tell us of the
23 seven individuals you named, including yourself, how many
24 were to participate in the actual robbery?

25 MR. GILMAN: I object to that on two grounds,

1
2 First of all, I think a precise time should be fixed,
3 and secondly it's a leading question and it calls for
4 a legal conclusion. How many were participating in
5 the bank robbery.

6 MS. GAINNEY: I believe I stated in the morning
7 of May 6th.

8 MR. GILMAN: I would like to know more
9 definitely when it was.

10 THE COURT: Could you give us an approximate
11 time?

12 THE WITNESS: Well, we left as close to about
13 11:00 , I guess.

14 BY MS. GAINNEY:

15 Q When you left for where?

16 A Jersey.

17 Q So prior to your leaving for New Jersey, had
18 it been decided who was to participate in the robbery?

19 A Yes. Jose Garcia was to drive the truck.
20 Barry and Chuck were to make the "in". I was to follow five
21 minutes later, and Tony would be at the back door ready for
22 the runners.

23 Q And was there anyone who had assembled the
24 five who were to participate in the robbery itself?

25 MR. GILMAN: I object, if your Honor please,

1 unless he knows directly from personal knowledge.

2 THE COURT: Naturally, if he knows.

3 Do you know?

4 THE WITNESS: Yes.

5 Q And who was that?

6 A Tony Ferrante organized the crime.

7 Q Now, did there come a time that you left the
8 bar to proceed to proceed to New Jersey?

9 A Yes.

10 Q And could you tell us in what manner the group
11 proceeded to New Jersey?

12 A Well, Tony and I got into Jose's car. Jose
13 got into the truck.

14 Q Would you describe Jose's car, please?

15 A Well, it was a small compact car, a little
16 car. It was yellow, I believe.

17 MR. ROSENKRANZ: It was what?

18 THE WITNESS: Yellow, with Jersey plates on,
19 and Barry got into his car with Chuck.

20 Q And would you describe what car?

21 A Well, it's almost a year ago, but I'm almost
22 sure it was also, it was a small car, dark colored, perhaps
23 dark brown, and Jose got into the truck, and Barry got to
24 the front, Chuck and Tony were in the center, and I was in
25

1
2 the rear.

3 Q Did there come a time when the five of you
4 arrived in New Jersey?

5 A Yes. We got there just about the time the
6 children would come out of school. I think they were high
7 school kids, college kids. They were coming out of school.
8 Jose parked the truck --

9 MR. GILMAN: Excuse me, your Honor. I think --
10 I object unless the identification of the hour is
11 made a little more explicit. Does he mean in the
12 morning, afternoon, evening? He said, "When the kids
13 come out of school." I don't know.

14 THE WITNESS: About a quarter to twelve, just
15 before lunchtime, and the truck was parked one block
16 from Kahn's. Jose parked -- I parked Jose's car about
17 a block away from Kahn's, away from the truck, and
18 Barry and Chuck parked their car about -- maybe
19 a 100, 150 feet away from Kahn's, on the other side of
20 the street.

21 BY MS. GAINES:

22 Q And what happened after that?

23 A Well, we proceeded to go to the train station,
24 because Barry and Chuck had gone to the train station. They
25 made a path by the store, and Tony was with him, and then

1
2 Jose came over and he was jumpy.

3 MR. ROSENKRANZ: Objection.

4 THE COURT: What was that?

5 MR. ROSENKRANZ: Your Honor, I objected to
6 the characterization of the defendant as being
7 "jumpy".

8 THE COURT: All right, I'll sustain that part
9 only. Just the word. Go ahead.

10 Q What, if anything, was done or said?

11 A He didn't want to go through with it. He more
12 or less felt that he just couldn't go through with it,
13 and Tony got a little beefed off about it, and upon -- they
14 walked around the corner again, and Barry had pulled his
15 car back around that side of the street, and we all sat in
16 the car. It was Tony, Chuck, Barry, Jose and myself, and
17 Jose said he didn't want to go with this. He didn't want to
18 do it. He felt there was something wrong with it, that
19 something was going to happen.

20 Tony got a little angry and so did Barry. And,
21 Barry said, "The heck with it. If you don't want to do it,"
22 something --

23 Q What did Tony say?

24 A He was peeved off about it. He didn't like
25 the idea he was going to back out then, and he got a little

1
2 mad about it, and words were exchanged back and forth, and
3 Barry said, "Well, we're here. No sense in pulling out now.
4 We will do it." Tony asked Jose if he would back the truck
5 in and, "You can go where you want to go. Forget about it."

6 They agreed. We walked back again to the train
7 station, and we were standing by the train station. Tony made
8 another pass by the front of the building.

9 Q What do you mean by pass by the front of the
10 building?

11 A He went by and looked at who was in the store,
12 probably if it was a customer or something, and he came back
13 to us; me, Barry, Chuck. We were standing over there, and
14 he says, "Go." He told Barry and Chuck to go. Barry and
15 Chuck just walked out up to the store, and they made the
16 entry.

17 Q What did you do after that?

18 A I was to wait five minutes, allow him time to
19 go into capture who was ever in there, tie them up, and hand-
20 cuff them, and tape them and put them away, which I did. I
21 waited exactly five minutes.

22 Then, I made my entry. I opened the door. A
23 bell rang, which was attached to the top of the door. It
24 was a bell that rang.

25 Q And what observations, if any, did you make when

1
2 you entered?

3 A Well, you mean the type of building?

4 Q Who you saw, if anything, or anything that you
5 saw?

6 A Oh, when I walked in the door there was a
7 Doberman that came over to me, a Doberman Pincher, and I
8 patted him on the head and told him to go lay down, and he
9 did. He turned around and went to the corner and just laid
10 down, and Barry and Chuck were walking out with the girl
11 in the front of them. They hadn't taken her. I said I don't
12 know about this, and Chuck shook his head, I guess meaning
13 no good. So I started to turn to go out, and I heard like
14 a little yelp, and I turned around, and Barry had his arm
15 around the girl's throat, and he was threatening her, saying
16 "If you scream I'll blow your head off," to that effect.
17 Then I saw the truck backing into the back of the warehouse,
18 and I proceeded to run over to open the door, but the door
19 was in a bolt-type lock, which you couldn't open. You needed
20 a key. So I ran back and I says, the door was locked and
21 Tony was motioning to put the stuff out through the window.
22 Barry said, "No."

23 Q Where was Tony?

24 A He was on the platform in the back of the
25 building.

(Continued on next page)

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Q Where was Jose?

A At the time, I don't think Jose was there, but when the door was opened, Jose came running into the place.

Q Continue telling us what happened?

A Anyway, Barry got something from the back room. Meanwhile, Chuck was holding the girl.

Q And where was Chuck holding the girl?

A Right in the vestibule of the store itself, and Barry went over and broke the door over with something, whatever it was, and then somebody says, "Don't forget the safe. The safe first," and Barry grabbed the girl again by the throat and he dragged her over to the door and asked if she would open the safe. He say, "You know you've got the combination," and she was shaking and everything. She complied. She opened the safe.

Q Would you describe this woman to us, please?

MR. GILMAN: Describe what?

A She was --

Q One minute. Would you describe this woman to us, please?

A She was very petite, attractive. She had a very pretty face, dark complexion, sort of olive complexion, black hair, short cut, nicely dressed, and a wedding band on

her left finger, left hand.

Q Continue telling us what happened?

A Well, she took a little time. She was very nervous, shaking about opening the safe, and finally she did, and they took -- after the safe was opened we started, Jose, Tony and myself, we started taking the rugs out of the safe and putting them outside on a little platform out there, like a stairwell going down.

Q And who was taking these rugs?

A Myself, Jose and Tony in the beginning. Then, Tony -- Tony jumped downstairs off the platform and started putting them on the truck and when Barry and Chuck got finished tying the girl up, they came out and started taking the stuff out also.

Q Where was the girl at this time?

A They tied her up and put her in the bathroom.

MR. ROSENKRANZ: Object to the word "they."

A Chuck and Barry tied her up and put her in the bathroom.

Q Continue.

A While this was going on, only Chuck remained in the bathroom with the girl at the time, and Barry came out, and started taking the rugs out with us, and I didn't see the girl anywhere, so I asked Barry what happened to the

1 girl and he said, "Don't worry. Chuck's gone. She's okay."
2 I said, "Where was she?" He told me in the bathroom. So
3 on my pass to the back, I went in there, and I took a look
4 in, and he was trying to take the ring off her finger.
5

6 Q Who was trying?

7 A Chuck was trying to take the wedding band off
8 the young girl's finger, and I got a little peeved at him
9 and said, "What are you going to get, two bucks for it?"
10 I said, "Get out of here. I'll watch her."

11 Q And could you describe the woman's position
12 at that time?

13 A Yes. She was laying down in the tub. It was
14 an old fashioned bathtub with legs on it. An old fashioned
15 type bathtub. There was a toilet bowl on the left side of it.
16 She was laying in it, her hands and feet were tied, and I
17 don't recall, I think, I'm not sure, there was handcuffs on
18 her also. Her eyes were taped and her mouth was taped. She
19 was sweating profusely. I asked her if she was all right and
20 she nodded her head, and I stuck her an old piece of rug
21 that I picked up, I put it behind her. I asked her if she
22 was comfortable.

23 Q And where were the others at that time?

24 A They were still taking rugs out of the store.

25 Q Do you know about how many rugs were taken from

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the store at that time?

A Quick estimate, I would venture to say was 60 to 100, I would guess. Quite a few.

Q And did there come a time that you and the others completed taking these rugs and loading them on the truck?

A Yeah. I heard somebody yell, "That's it. That's it. That's enough. All the rest is garbage. Leave the rest."

Tony wanted to empty out the whole store. He says, "Take everything," and somebody else said the rest is junk. It's all garbage. It's all ripped. It's nothing. Leave it."

Q And what happened after this?

A Well, they jumped down off the platform, Jose jumped into the truck, Tony locked up the back, and we jumped on the side, Tony and I, and we drove down the block.

Q Well, prior to your leaving, where were you located?

A I was in the bathroom. They called me out in bathroom.

Q And was anything said to you about the woman who was in there before you left?

A I -- Barry told her, "If you scream or make any

1
2 kind of noise, I'll come back and blow your brains out."

3 Q What did Barry do after that?

4 A He told me, he says, "Come on. That's it.
5 That's the end of it." He told me, "That's it. That's the
6 end of it. Let's get out of here. Let's make it."

7 Q And what did you do after that?

8 A Well, I told the girl, I says, you know, I says,
9 "Don't -- listen, don't worry about it. Nobody's going to
10 hurt you. Count to about 500 and count very slowly," I said,
11 and I loosened up her bandage on her ankles and on the wrists
12 so she could get up and walk, but I said to her, "Don't make
13 a fool of me. Give me a break here. You get up and count
14 to 500, 1000," I say, "Then get up and just call the police."

15 MS. GAINY: Your Honor, at this point I would
16 like to have someone come in and place their name on
17 the record.

18 THE COURT: All right. Step forward and place
19 your name on the record.

20 What is your name?

21 THE SPEAKER: Marianne La Riche.

22 THE COURT: Will you spell it.

23 THE SPEAKER: L-a R-i-c-h-e.

24 THE WITNESS: That's the girl.

25 MS. GAINY: Thank you, Miss LaRiche.

THE COURT: All right, you may step out.

(Whereupon Miss LaRiche left the courtroom.)

BY MS. GAINES:

Q Now, did there come a time that all of you thereafter left the rug store?

A Yeah. I left. I thought that I was the last one out of the place. When I got out and went to the back of the truck I had assumed that everybody had left except me. I wanted to just be sure the girl was all right before I left, and I did. I went out to the back door and I jumped onto the truck. Tony had closed the back door, Jose got behind the wheel and we drove out. We went to the left, maybe a half block away from the store, and Tony told Jose to go, go ahead, you know. Jose wanted to go. He was like, you know, go, take him away from the place, which he did. He dropped us off by his car. We got into his car, Jose's car, and I pulled out and started to leave, and at that moment Tony turned around and saw Barry and Chuck walking from the store to their car, and Tony got mad, jumped out of the car screaming, and said, "They ain't gonna take this away from me. What do they got in the bag?" I said, "Probably nothing." He said, "I'm going to check it out," and he ran back all the way to the store, and he came back to the car, and said it was a small rug, a little tiny rug. He said that

1
2 Barry had put his gun in the rug and stuck it in a brown
3 paper bag.

4 Q Did there come a time that all of you proceeded
5 back to Brooklyn?

6 A Yes. We -- Tony and I took off after the
7 truck, which was far gone by then, and Barry and Chuck follow-
8 ed in his car, Barry's car.

9 Q Did there come a time when you arrived in
10 Brooklyn?

11 A Yeah.

12 Q And where did you go?

13 MR. GILMAN: Excuse me, I object, your Honor.
14 I'd like to know what time that was.

15 THE COURT: Well, if he knows the time.

16 Q Approximately what time was that, Mr. LaMorte,
17 if you know?

18 A Well, I -- we -- I stopped on the pretext of
19 going to the bathroom first, because I had asked Tony if he
20 would stop and make a phone call and call the police and
21 make sure that the girl got out of the bathroom, and he didn't
22 want to stop. I told him, "I have to go to the bathroom. I
23 have to stop," and out of pretext of going to the bathroom I
24 went to the phone and called up 911 and told them that a
25 robbery had just occurred at Kahn's Oriental Rugs, and then

1
2 we got back in the car. By this time Barry had passed us
3 with Chuck. WE couldn't catch up with any of them. We lost
4 both of them.

5 We finally made it into the bar. Barry and
6 Chuck were drinking beer --

7 MR. GILMAN: I'd like to know what time it
8 was he got to the car.

9 THE COURT: It's a continuing thing. They
10 went to Brooklyn; is that right?

11 THE WITNESS: Yes.

12 MR. GILMAN: What time?

13 MS. GAINEY: Mr. Gilman.

14 THE COURT: You can ask him what time.

15 Q Do you recall approximately what time that
16 was, Mr. LaMorte?

17 A Yes. It was, if I recall correctly, it was
18 just a little after 2:00 o'clock.

19 Q And where did you go in Brooklyn? I'm not
20 sure I asked you?

21 A We went to a bar on Washington and Flushing.

22 (Continued on next page)
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LaMorte-direct

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2 Q Was that the bar that you had met in earlier
3 in the morning?

4 A Yes. The same bar.

5 Q And when you arrived at that location, who if
6 anyone was there?

7 A Well, Manuel was there along with Joe Schnitzer,
8 and there was another friend of Manuel's, I don't know who
9 he was. Chuck and Barry were there, and myself and Tony.
10 Jose had not come into the store yet, in the
11 bar.

12 Q And was any conversation had at that time?

13 A Yes. Manuel asked how things went, and Tony
14 said, "Well, didn't Jose get back with the truck yet?" And
15 he said, "No. We didn't see the truck," and Tony was a little
16 worried at that time, and Manuel said, "I got the buyers
17 ready."

18 At that time Jose walked in, told Tony that
19 "Everything is all right. I got the truck parked by the
20 bar.

21 Q What bar was he referring to?

22 A There was another bar near the expressway, I
23 don't know the name of it -- Vinnie's bar. The bar that
24 Vinnie owned or something -- his father owned or something.
25 His truck was parked across the street from the bar.

1 Q What happened when Jose came in?

2 A Tony told me to come in and take the truck.
3 We went to the bar along with Jose, and Jose took his car
4 and drove us there, and then I got in the truck. Tony told
5 me to bring it around to the drop, around the corner to
6 the drop.
7

8 Q And where was the drop located?

9 A It was on Adelphi Street. I don't remember the
10 number, though. This was in an old garage with an old door,
11 walk in door, one that pulled up.

12 Q And where was it located?

13 A Where was it located?

14 Q Could you pinpoint it? First of all, was that
15 in Brooklyn?

16 A Yes, in Brooklyn, on Adelphi right off of
17 Flushing Avenue. Adelphi Street.

18 Q And did you bring the rugs back to that location?

19 A Yes, Ma'am. I drove the truck right in.

20 Q And what happened at that time, if anything?

21 A Well, there was a German Shepherd there. I
22 almost stepped into him, but I walked out the other way, and
23 I went to the back and opened the back door of the truck.
24 Tony was there already. And, I started to make an attempt
25 to count the rugs, and Tony says, "Forget that." He says,

1
2 "I'll take care of it," and at that time Manuel came in,
3 took his overcoat and jacket off, and went into the truck
4 and was looking at the rugs, checking them out, and started
5 separating them. Tony told me to go back to the bar.

6 Q Now, you say the drop was located on Adelphi
7 Street. AT that time, May 6th, 1976, did you know the name
8 of that street?

9 A No. No. I wasn't really that sure of it until
10 about a month ago, I believe. The agents took me back to
11 identify the area and the garage, and I did. I went back
12 with them. I showed them where it was, and I kept saying
13 Apollo Street, but it was Adelphi Street.

14 Q Continue now. You say at this garage which you
15 now know to be Adelphi Street, you were chased out; is that
16 correct?

17 A Yes, Ma'am.

18 Q What happened after that?

19 A I went back to the bar with Joe Schnitzer, and
20 Barry and Chuck were still drinking and playing pool, and
21 they asked me, you know, what the story was. I say, "Manuel's
22 in there counting the stuff to see what we got."

23 Q Had any arrangements been made -- withdrawn.
24 Were you and the other participants to be
25 paid for your work on this particular job?

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A Yes.

Q And had any arrangements been made as to how much each individual was to be paid?

A Well, at the time it was supposed to be that whatever we got we would get half of the wholesale value.

Q Who would get half of the wholesale value?

A Manuel would sell it for half of the wholesale, and he, in turn, would take 25 percent of whatever the figure was, of which he would pay Joe Schnitzer, and the rest would be split among ourselves.

Q Continue telling us when you went back to the bar with Joe Schnitzer?

A I went back in, and Chuck was broke. I gave him ten bucks, and he wanted to know if he was going to get the money that night. I said, "It's possible." I say, "I'm waiting just like you are," and we stood around there I guess for about an hour or so, I guess, and he said to me, "Why don't you go down. Maybe you can get some money now," And I did. I went back to the drop. When I got in there, I knocked on the door and they were still busy in there.

Q Who was still busy?

A Well, it was Manuel, Tony and some other guys that were there, in there. When the door opened, one guy was at the door when the door opened. He moved away. He was

1 a guy with busy hair and a mustache.

2 I told Tony the guys at the bar wanted to know
3 if they're going to get their money tonight. He said, "No .
4 Tomorrow at 12:00 o'clock."

5 So I did -- I went back to the bar -- oh, he
6 told Joe Schnitzer, he says, "Look, as long as you're going
7 to be hanging around, take my car to the garage on Flushing
8 Avenue and have them check out the brakes for me." He said,
9 "I think there's something wrong with my brakes." So, we
10 took Tony's car and drove back to the bar, and I told Chuck
11 and Barry to come back tomorrow, the next day , that we would
12 get paid at 12:00 o'clock.

13 Q Did you thereafter have any conversation with
14 Tony Ferrante on that evening?

15 A Much later on in the evening. It was a little
16 after 7:00 o'clock. We had gone to the garage to check out
17 Tony's car, and the guy found nothing wrong with it. The
18 car was in good shape. He said there was nothing wrong with
19 the brakes.

20 So, we proceeded to go back to the drop on
21 Adelphi Street, and Tony opened the door again. Joe told
22 him the brakes were good, this and that, but he wouldn't let
23 us inside the place. He wouldn't let us inside the drop.
24 He said, "What do you want to meet the buyers? Go home."
25

I say, "I don't have a car. You took me here."
He said, "Go to the bar and wait for me, and I'll pick you up."

Q Did he subsequently pick you up and take you home?

A Yes. It was after 8:00 o'clock.

Q And did you thereafter, the following day, meet with Tony Ferrante around noontime?

A Yes. The next day I drove down with my car. Tony was already at the bar. He was waiting for me.

I asked him, "Did you get the money?" And he said, "Yeah. I got everything," and at that moment Chuck and Barry walked, and I asked him how much, you know, how much we were going to make. He said, "Don't worry. You got a good end. Your end's going to be good. But forget about money. It was all garbage. We didn't get good stuff. Only a few pieces."

He took Chuck in the bathroom and took Barry into the pool table area and gave him something, and he handed me \$1200 cash.

Q Was Manuel Fernandez present on that occasion?

A No.

Q Was Jose Garcia present on that occasion?

A He came later.

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Q And did you observe whether or not Tony Ferrante paid Jose Garcia any money?

4

5

A I asked him, I say, "Did you pay Jose," you know, "Did you get Jose?"

6

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He say, "Screw him. Don't worry about him."
He say, "I'm going to give him what I want to. He ain't going to get a full cut anyway."

9

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11

I say, "Why not? He was with us."

He say, "Let me do what I was going to do."

I wasn't going to argue with him.

12

13

14

Q When you got paid, did you leave on that occasion?

A Yes. I had one drink. There was a skinny

Go-Go dancer that day, terrible looking.

15

16

Q And thereafter, when was the next time that you saw Tony Ferrante?

17

18

19

20

21

A Well, I left that night. I went back to Grant Street to a club, social club, and had a few drinks in there. Then I went home, and on, I believe it was on a Saturday morning, he come to my house and he said that he needs me to move the rugs out of the garage.

22

23

24

25

Q Speaking of the garage on Adelphi Street?

A On Adelphi.

Q Do you know why Tony couldn't move the rugs?

A He said he couldn't move the truck. He didn't

1
2 have a license at that time.

3 Q Continue.

4 A First, I heard about it, I said, " Why don't
5 you get Jose. Let Jose move it."

6 He say, "I don't trust him." He say, "I want
7 you to do it." So I say, "All right."

8 I got dressed, put a sweatshirt on and a pair
9 of dungarees. Then he took me in his car and we went down
10 to the garage. It took me about 20 minutes to back the
11 car out, I couldn't find the reverse gear. Finally, I let
12 it roll out.

13 Q Did Tony Ferrante tell you where to proceed
14 with the rugs?

15 A Yes. He wrote an address down on a piece of
16 paper, 108th Street. I don't know if it was Flatbush or
17 Flatlands, but there was an address on there.

18 I started to go to Adelphi Street. I made a
19 couple of wrong turns. He pulled up to me and say, "You're
20 going the wrong way. Follow me. I'll take you there."

21 Q Was Tony driving the car at that time?

22 A Yes, he was.

23 Q Would you describe it?

24 A It was a beat up Plymouth, '68, I guess. It
25 was -- right fender was all dented in.

LaMorte-direct

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2 Q And did you thereafter follow Tony Ferrante's
3 car?

4 A Yes. He took me to this side street. It was
5 all these iron fences like back of the stores there. I didn't
6 know what it was at the time. I didn't know it was a liquor
7 store there.

8 (Continued on next page)
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1 Q And when you arrived at this location what
2 happened, if anything?

3 A They made me wait outside for about 15 minutes,
4 I guess. He was inside talking, and finally I saw the door
5 opened, and he whistled to me to come over.

6 Q Who is this?

7 A Tony . So I got in the truck and I remembered
8 where the reverse was, and I backed it up against the door,
9 flush against the door, and then Seymour and Tony started. I
10 was handing the rugs off the truck.

11 Q Who was Seymour?

12 A Well, at the time I never met the person in
13 my life, I found out it was Seymour Weinberger.

14 Q Was he the owner of that liquor store?

15 A He owned the liquor store.

16 Q Continue.

17 A Seymour was questioning him as to what kind
18 of garbage was this stuff. "Is it good?"

19 Tony told him, "Shut up and just do what you
20 are told," and started taking the stuff off.

21 Q What happened when you unloaded the truck?

22 A We got a surprise. I heard a screech, like a
23 car screeching to a halt, and all I saw was guns, and one
24 of the men that jumped into the van yelled, "FBI," and, "Hit
25

1 the wall." You know, of the truck, which I did immediately.

2 Q And were you arrested on that occasion?

3 A Yes. Took us into the liquor store.. They
4 cuffed me, in the truck they cuffed me, and took us into the
5 liquor store, and that was it.

6 Q Was Tony Ferrante also arrested on that occasion?

7 A Yeah.. They caught him running down the block.
8 He had run out of the front of the store, and they caught
9 him running down the block, and they arrested him.

10 Q Mr. LaMorte, I would like you to take a look
11 at Government's Exhibit 2 for identification and --

12 A Can I touch it?

13 Q Just look at it. Yes, you can touch it. And,
14 can you tell us if you recognize that item? (Handing to
15 witness.)

16 A Yeah. This is Tony's phone book. Tony Ferrante.

17 Q And when was the last time that you saw that
18 phone book, with the exception of when I showed it to you
19 in my office this morning?

20 A Well, Tony kept that in his car. He used to
21 keep it in his car, in the glove compartment.

22 MS. GAINES: I have no further questions.
23
24
25

Kahn-direct-Gainey

having been duly sworn by the Clerk of the Court,
testified as follows:

THE COURT: Talk into the mike, raise it
so it reaches your level.

THE WITNESS: How is this (indicating)?

THE COURT: Okay, that's fine.

MS. GAINNEY: If the Court will bear with
me one minute, please.

DIRECT EXAMINATION

BY MS. GAINNEY:

Q Mr. Kahn, what is your occupation?

A I am currently a wholesaler of antique
and semi-antique Oriental rugs.

Q How long have you been in this business?

A Approximately five years.

MR. GILMORE: Your Honor, nobody wants to
use that beautiful microphone, I don't know why.
I can't hear him.

He has the microphone the other way.

THE COURT: Bend it like that, then.

(The witness did as requested.)

THE WITNESS: That is it.

It is not going to fly in my face?

I will just hold it.

1 THE COURT: Talk into it.

2 THE WITNESS: Is this satisfactory?

3 MR. GILMAN: Beautiful.

4 THE WITNESS: Good.

5 BY MS. GAINNEY:

6 Q Now Mr. Kahn, what was the last question,
7 I think my last question was how long have you been in this
8 business, anyway, that is my next question.
9

10 A That was the question and I said approximately
11 five years.

12 Q And can you tell us what this business
13 involves, please?

14 A Well, it involves first of all the purchasing
15 wherever one can, of goods in question which are antique
16 and semi-antique Oriental rugs; we buy them at auctions, we
17 buy them from private individuals, we buy them from other
18 dealers, State sales, and we sell them either to retail
19 customers or to other dealers.

20 Q And does the nature of your business call for
21 you to appraise the value of rugs you deal in?

22 A That is the single most important aspect of
23 the business because every day you are buying Oriental
24 rugs and if you don't know what they are worth then you
25 are going to be out of business very fast.

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Kahn-direct-Gainey

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Q And how does one determine the quality and/or

3

the value of such a rug?

4

A Well, it is a very difficult question to

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make a formula on, but in general I would say that first

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of all the rug has to be beautiful, after it is beautiful

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it has to be of good quality workmanship and of good

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quality materials; the age of the rug and the rarity of the

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rug are also factors, and of course, the condition relative

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to the original condition when it was made is very important.

11

Obviously a worn example is much less value than a perfect

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rug.

13

Now these are some of the factors involved.

14

Q On May 6, 1976, were you the owner of R.H.

15

Kahn Antique Rugs and Textiles located at 106 Alexander

16

Road, Princeton, New Jersey?

17

A Yes, I was.

18

Q And how long had you owned that establishment

19

prior to May 6, 1976?

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A Well, the business was opened officially in

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September of 1973, so by my calculations that would have

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been just under three years, two years and nine months.

23

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(continued on next page)

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Kahn-direct-Gainey

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Q What was the nature of the business in that establishment?

A Well, we opened with an inventory of antique and semi-antique Oriental rugs, both decorative rugs for use in a home and collectors' pieces for collectors, and we sold principally to the retail business at that time. We also did some small portion of our business with other dealers mainly located in New York and mainly selling them things that they needed for their business, which they could use and have customers for.

Q On May 6, 1976, were you present at your business on that day?

A I was present in the morning and then I took my car down to Philadelphia for an auction which was to take place at the S.T.Friedman & Company at 1 o'clock.

Q Did there come a time when you were in Philadelphia that you received any information in connection with your establishment in Princeton?

A Yes, I was notified by one of the members of the Friedman firm that apparently a robbery had taken place at my place of business and I was requested to return at once, which I did.

By the way, who was in charge of the business on the particular day while you were away?

1

2

A Mrs. LaRiche.

3

Q Is that Mary Ann LaRiche?

4

A That is correct.

5

6

Q After receiving this information, what did you do?

7

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A I got into my car and I drove back as fast as I was able and when I got there I met Mrs. LaRiche and I believe there was a local police officer there, one or more.

11

12

Q Did you make any observations with respect to your store at that time?

13

14

15

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A I saw that what retail inventory we had in various rooms was virtually cleaned out. Then I went towards the safe which was open, and that was empty, and I assume we were virtually cleaned out.

17

18

19

Q What type of inventory was it?

A Both of the decorative and the collector type of Oriental rug.

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Q Did you ever see any of these rugs again?

A Yes, I saw them in two locations at two times, the first was following -- well, I should say, man, that I went up around midnight to Teaneck, New Jersey where I had cause to go into the home of Mr. Tom Anivim.

Q Who is Rom Anivim?

3 1 Kahn-direct-Gainey

2 A He is the owner or co-owner of --

3 MR. GILMAN: I am going to object to this
4 unless this witness has a direct personal knowledge
5 of what he is about to testify to.

6 THE COURT: If he knows, he can tell us, I
7 am sure.

8 MR. GILMAN: If he knows.

9 THE COURT: Do you know?

10 THE WITNESS: Do I know what?

11 THE COURT: I don't know, whatever you are
12 supposed to.

13 THE WITNESS: If you want to object to it --

14 THE COURT: Don't ask him, I have such a
15 small role around here and it is so infrequent
16 that I have a chance to say something to somebody,
17 so please do me a favor and just answer the question.

18 BY MS. GAINNEY:

19 Q Do you know who Tom Anivim is?

20 A I have met him personally.

21 THE COURT: He knows him.

22 MS. GAINNEY: Okay.

23 Q What does he do?

24 A He is either the owner or co-owner of a
25 clothing business --

Kahn-direct-Gainey

MR. GILMAN: Your Honor, I object --

THE COURT: Let him finish.

MR. GILMAN: I object, he just said the owner or co-owner of something and he hasn't indicated any direct knowledge of that, your Honor.

THE COURT: If you know anything different, you can ask him on cross-examination.

You may tell us.

MR. GILMAN: I will object, your Honor.

THE COURT: That is all right.

All right, go ahead.

A He is -- he has a store which sells European-style clothing to men and women which is right next to Maxwell's Plum, which is an elegant restaurant in Manhattan.

Q Do you know the name of that establishment?

A It is called the Morning After.

Q Now, you said you were present at the home of Thomas Anivim --

A Yes, sir.

Q In Teaneck, New Jersey, where you again saw some of your rugs; is that correct?

A That's correct.

Q Could you tell us under what circumstances they were -- withdrawn.

1
2 Q Could you tell us under which circumstances
3 you were present at Anivim's home at that time?

4 A Well, I got called around midnight, Sunday,
5 which would have been I believe, the ninth or the tenth,
6 anyway, the Sunday following the robbery at midnight. I
7 got a call from an FBI agent saying that I was wanted in
8 Teaneck, that they were going there, that they believed
9 that some of my merchandise was located in a home up there
10 and would I please be available to come to identify such
11 merchandise if any was found there.

12 I said yes, I would, and I drove up there and got
13 up there about 1:15.

14 We waited until daylight so there wouldn't be any
15 problem with the search warrant and we went in and we found
16 down in the family room that there was --

17 Q There was what?

18 A Well, I believe we recovered 47 rugs from
19 that location.

20 Q Was that recovery pursuant to a search
21 warrant executed by the FBI at that time?

22 A Yes, that is why we waited until dawn to go
23 in because --

24 Q And what happened with respect to Thomas
25 Anivim at that time?

Kahn-direct-Gainey

A Well, we met him with his attorney and we went in and we saw, we searched the place and then we looked down in the family room and then we found that there were 47 rugs and we proceeded then to check off the rugs that were on the inventory from which the search warrant was drawn and that is basically what we did.

Q How many rugs were recovered at that time?

A At that time my recollection is there were 46 or 47 rugs which were recovered, we took an inventory of every item that was recovered there, and I believe the FBI has that inventory.

Q All right.

Now, did there come a time that you saw some more of your rugs that were taken from your shop on May 6, 1976.

A Yes, I believe it was May 11, which would have been a Tuesday.

I went out -- well, I went into Manhattan to the FBI headquarters -- on what is it, Second Avenue or Third Avenue, I guess it is -- and I was taken by an agent out to a location in Brooklyn, a large lot with a building on it and some trailer bodies and there was something like a bread truck, a van, that we went over to and it was locked. We opened it up and the remainder, as far as I can tell, of the rugs that were taken on May 6 were recovered there.

7 1 We again checked them off and made an inventory of
2 each piece that was found in that location.

3 Q I show you Government's Exhibit 1 in evidence
4 and ask you if you recognize what is depicted in that
5 photograph?
6

7 A That is the truck that we entered and recovered
8 the rugs from

9 Q Now, how many rugs were recovered at that
10 time?

11 A I would say approximately 49, but, you know --

12 Q Let me withdraw the question.

13 A Okay.

14 Q How many rugs did you observe in the truck
15 at that time?

16 A They were all piled up so we took them out
17 one by one, but after we had made the inventory of them
18 I believe it added up in the neighborhood of 49, 48, 49,
19 something like that.

20 MS. GAINEY: May I have these photographs
21 marked as Government's Exhibit 7 collectively
22 for Identification?

23 THE CLERK: Photographs marked for Identifica-
24 tion as Government's Exhibit 7.

25 BY MS. GAINEY:

Kahn-direct-Gainey

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2 Q Mr. Kahn, I ask you to look at a series of
3 photographs, Government's Exhibit 7 for Identification, and
4 ask you if you recognize what is depicted in those photos?

5 A Yes, these are the -- these are photos of
6 the rugs that we recovered in Brooklyn on the 11th.

7 MS. GAINES: I would offer them into evidence
8 as Government's Exhibit No. 7, first showing them
9 to counsel.

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(continued next page)

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MR. GILMAN: I have no objection. I think

somebody ought to count them.

MS. GAINNEY: I offer them collectively at this time in the interest of saving time.

THE CLERK: Government's Exhibit 7 for Identification received in evidence.

(So marked in evidence.)

MS. GAINNEY: May I have these items marked as Government's Exhibit 8 and Government's Exhibit 9 for Identification?

THE CLERK: Document marked Government's Exhibit 8 for Identification.

Document marked for Identification as Government's Exhibit 9.

Q I show you Government's Exhibit 8 for Identification, Mr. Kahn, and ask you if you recognize that document?

A Yes, this is the inventory that we took of the items that we recovered in Brooklyn on the 11th.

Q Is that document signed by you?

A Yes, my signature appears on each page.

Q Does that document represent a receipt?

A Yes. It represents the fact that these things were returned to me.

Kahn-direct-Gainey

Q Were all of the items returned to you at that time?

A They were all technically returned to me but I was informed that certain items were desired to be held as evidence for this or other trials. So I selected at that time as light a weight and small a bulk of items I could that could qualify.

Q At the time you made the inventory with the FBI agent -- withdrawn.

MS. GAINNEY: May I first offer this document into evidence?

THE COURT: Deemed marked in evidence.

MS. GAINNEY: Any objections?

MR. ROSENKRANZ: I think it easier to look at it.

MR. GILMAN: I have no objection. I assume he is telling the truth.

MR. ROSENKRANZ: I have no objection, Judge.

MR. GILMAN: I have no objection.

MS. GAINNEY: Deemed marked in evidence.

Q Mr. Kahn, at the time you made this inventory in the presence of the FBI agent, did you give him a description of the rugs?

A I am not sure I follow your question.

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Kahn-direct-Gainey

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Q Did this inventory consist of a description of the rugs?

A Yes, the rugs are listed by name. Certainly as to their origin. These are names of individual types of rugs.

Q Did you also indicate the value of those rugs when making the inventory?

A Yes.

Q I show you Government's Exhibit 9 for Identification and ask you if you can recognize that document?

A Yes. This is basically a typed up copy with a little bit of additional information as to each of the individual items of the pieces.

Q Was that information furnished by you?

A Yes. The agent is not familiar with this. This is my information.

MS. GAINES: At this time I would offer this document in evidence as Government's Exhibit 9, first showing it to counsel.

MR. GILMAN: May I have one question on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

Kahn-voir dire-Gilman
direct-Gainey

BY MR. GILMAN:

Q Are the prices wholesale or retail?

A I tried to avoid that pitfall because retail price between dealers could vary tremendously and wholesale-retail is a bad concept. I use current market value, at what price between a knowledgeable buyer and knowledgeable seller.

Q Between a non-knowledgeable seller --

A That is not worth anything.

Q I mean knowledgeable seller but a non-knowledgeable buyer -- never mind, I have no objection.

MR. ROSENKRANZ: I have no objection.

THE COURT: Deemed marked in evidence.

DIRECT EXAMINATION

BY MS. GAINNEY: (continuing)

Q Could you tell us the approximate total value of the rugs that you saw in the van that were recovered in Brooklyn?

A You are talking about retail value? We had resale value followed by the description. I don't have a calculator here either. You are going to have to bear with me if I do a little addition.

MR. GILMAN: If the Government wants to strike a figure, I will accept it.

Kahn-direct-Gainey

MS. GAINNEY: The Government doesn't know the figure.

Will counsel concede, without giving a particular figure, that the value is in excess of \$5000?

MR. GILMAN: Absolutely.

MS. GAINNEY: I would offer as Government's Exhibits 10, 11 and 12, showing to counsel if counsel desires to see, for identification first, and then I will ask if Mr. Kahn would step down and we can spread them out on the floor.

THE WITNESS: You can do whatever you like. I can see them from the microphone just as well.

Q Okay, fine.

THE COURT: What is the purpose of this?

MR. ROSENKRANZ: It says, made in Japan.

THE COURT: What is the purpose of this?

MR. ROSENKRANZ: To show him the rugs. Is that upside down?

MS. GAINNEY: What do I know from Oriental rugs?

THE WITNESS: They are right side up.

Q I ask you to look at Government's Exhibit 10, 11, 12, 13 for Identification, and ask you if you recognize those items?

Kahn-direct-Gainey

A Yes, I can tell these from any others.

Q Let's take Government's Exhibit 10, what do you recognize that to be?

A Well, I will give you the history of that. That was in a collection in Switzerland. It came up with another identical example, a Sotheby Parke Bernet, on January 10th of last year and this and another example were sold for \$3100 to me. I have one promised to a friend of mine.

Q Is that the approximate value of that item?

A There was a pair. The value of each would have been Fifteen hundred and fifty dollars.

MS. GAINNEY: I offer this in evidence as Government's Exhibit 10.

THE WITNESS: The market value at the time.

MR. GILMAN: Haven't they been marked?

THE COURT: Deemed marked.

MR. GILMAN: I have no objection to all of them.

Q Now, with respect to Government's Exhibit 11 for Identification, do you recognize that?

A That is a Caucasian Bag Face. It is the exact same design as the other one but not as fine a material purchased by me for \$550 in Washington, D.C. But

Kahn-direct-Gainey

its current market value could be approximately \$1000.

Q Showing you Government's Exhibit 12 for Identification, what do you recognize that to be?

A That is a Balouchi Bag Face purchased by me for \$300. The current market value I would say to a collector would be in the neighborhood of \$700.

Q Referring to Government's Exhibit 13 for Identification, what do you recognize that to be?

A That is an antique eagle Kavak. It was not purchased by me but exchanged for another rug between myself and a good friend of mine, a dealer in Hartford, Connecticut.

Its current market -- wholesale market value is approximately \$8000.

Q Now, were these items -- I don't know if I offered items No. 11, 12 and 13 --

THE COURT: They are in evidence.

Q Were these items shown to you in the van at the time in Brooklyn that you mentioned?

A Yes. They are pictured in the exhibit you have.

Q Were these items taken from your establishment on May 6, 1976?

A Yes, they were.

1
2 Q Mr. Kahn, do you know an individual by the
3 name of Manuel Fernandez?

4 A Yes.

5 Q Would you look around the courtroom and see
6 if you see that individual?

7 A Yes, sitting at the defense table. He just
8 rose.

9 Q Indicating the defendant Fernandez?

10 A Yes.

11 Q Do you know under what circumstances you
12 know Manuel Fernandez?

13 A Well, under two very basic circumstances.
14 First of all, Mr. Fernandez, from the first time I met him
15 was as a dealer in Oriental rugs. I never -- I shouldn't
16 say never, I don't recall seeing him by himself. I would
17 always see him at various auctions, what have you, in the
18 company of Mr. Edward Shamash, now deceased.

19 Q Did you ever have any dealings either with
20 Mr. Fernandez and/or Mr. Shamash?

21 A Yes. I don't recall if we had any dealings
22 outside of my premises but in the early months of when I
23 opened my store, that is September '73 or possibly in the
24 late summer prior to opening, I occasionally sold a few
25 Oriental rugs to Mr. Shamash. Mr. Fernandez was always

with him.

In addition, following that, they would come by from time to time looking to buy rugs from me on occasion. Sometimes they would bring some rugs that they offered for sale.

In fact, over the course of time when they made these visits I believe I bought three Oriental rugs from them. It could have been more but I remember three rather distinctly.

MS. GAINNEY: Thank you very much.

MR. GILMAN: May I?

MR. ROSENKRANZ: May I go first?

MR. GILMAN: I'm sorry, forgive me.

MR. ROSENKRANZ: Only because I come first in the indictment.

MR. GILMAN: I am glad I am not in the indictment.

CROSS-EXAMINATION

BY MR. ROSENKRANZ:

Q Do you drive frequently from Princeton to New York?

A Yes.

Q How long does it take you during the day in normal traffic?

10 1
2 A Non-rush hours, from the door of my shop
3 through the Lincoln Tunnel can run anywhere from an hour
4 to an hour and ten minutes.

5 Q Would you agree that to get from the Lincoln
6 Tunnel to Brooklyn would approximately be another half hour?

7 A I only had occasion recently to come to
8 Brooklyn. I can't tell you anything about that.

9 Q You say approximately an hour to an hour and
10 ten minutes in non-rush hour traffic from your store to
11 the New York side of the Lincoln Tunnel?

12 A That is taking the route I take. That is
13 route 1 to exit 9, to 16, through the Lincoln Tunnel.

14 Q Would you say that you try to take the quickest
15 or longest route?

16 A What I believe to be the quickest route.

17 MR. ROSENKRANZ: Thank you very much.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. GILMAN:

21 Q Mr. Kahn, when is the last time you saw
22 Manuel Fernandez?

23 A You mean apart from here in Brooklyn?

24 Q In your store.

25 A Let me see, I would say that it was late into --

3PM

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Kahn-cross-Gilman A 347

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2 I was thinking late into '74.

3 Q That was the last time?

4 A To my recollection. I don't have -- it's not
5 the type of thing that stood out in my mind. It could have
6 been a little earlier or later.7 Q Do you remember giving rugs to Manuel
8 Fernandez on memorandum?9 A Again, I should clarify, with the exception
10 of one particular item which was not on memorandum, the
11 items were always given to Mr. Fernandez and Mr. Shamash.
12 When I would be paid for a rug it would be only by Mr.
13 Shamash.14 Q When you gave the items, did he pay for them
15 immediately on the spot?16 A There were occasions when -- there were
17 occasions when I would be paid by check on the spot. There
18 would be occasions when they said they wanted to show the
19 rug to a customer. And there would be some time lapse
20 and one occasion when I gave a rug to Mr. Fernandez which
21 he said he wanted for himself and after a long period of
22 time and returned to me unable to pay for it.

23 Q The others were all paid for?

24 A I don't believe there was a rug given out
25 that wasn't returned or paid for.

MR. GILMAN: Thank you.

MS. GAINES: I just have one.

REDIRECT EXAMINATION

BY MS. GAINES:

Q Since the last time you saw Mr. Fernandez in your shop, have you seen Mr. Fernandez?

A Yes, I have seen him on the street in Manhattan occasionally. I have seen him in the shops of a couple of other rug dealers, apparently taking iters for repair work.

Let me see, I have seen him once or twice in the place where he occasionally works, at a Pillary on Madison Avenue.

Q Do you know an individual by the name of Larry Farlano?

A Yes.

MR. GILMAN: I must object unless this is connected in some way. I doubt it.

MS. GAINES: I do intend to connect it.

THE COURT: If you don't I will strike it.

MR. GILMAN: Will you be able to strike it from the minds of the jury?

THE COURT: I assume when the jury is told to disregard something they will disregard it.

1 A You asked me whether I know Larry Ferlano?

2 Q Yes.

3 A He is a personal friend of mine who deals in
4 the same merchandise between 62nd and 63rd on Madison
5 Avenue in Manhattan.
6

7 Q Has Larry Ferlano ever been in your shop?

8 A I believe the first time he had been in my
9 shop would have been early in '76.

10 Q Do you know whether or not Larry Ferlano
11 knows Manuel Fernandez?

12 MR. GILMAN: Now we are reaching.

13 THE COURT: Yes.

14 Q Have you ever seen Larry Ferlano in the
15 company of Manuel Fernandez?

16 A I don't know in the company. I have seen them
17 at the store.

18 MS. GAINNEY: I have no further questions.

19 THE COURT: All right. No questions?

20 You may step down, thank you.

21 MR. GILMAN: Wait, I have one more question,
22 your Honor. If I may ask the witness from where he
23 is standing.

24 RECROSS EXAMINATION

25 BY MR. GILMAN:

1
2 Q Counting the rugs that we have seen in the
3 courtroom and the rugs that have been returned, did you
4 get all your rugs back?

5 A I believe I got every rug. The only thing
6 I didn't get back was a --

7 Q All the rugs came back?

8 A Yes.

9 (Witness excused.)

10 R O N A L D W . K O S E D N A R ,

11 a witness called on behalf of the United States of
12 America, was sworn by the Clerk of the Court and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GAINNEY:

16 Q By whom are you employed?

17 A The FBI.

18 Q In what capacity?

19 A Special Agent.

20 Q How long have you been so employed?

21 A About six and a half years.

22 Q Do you have any particular assignment?

23 A Truck hijacking squad in the New York office.

Q Were you so employed on May 8, 1976?

25 A Yes.

Kosednar-direct-Gainey

DIRECT EXAMINATION

BY MS. GAINNEY: (continuing)

Q After you discovered this book, what did you do with it?

A Gave it to Agent Bowling.

Q Is that AGent Bowling sitting right there (indicating)?

A Yes.

Q Was Agent Bowling the case agent in charge of this particular case?

A Yes.

Q Now, on November 3, 1976, did there come a time that you arrested Manuel Fernandez?

A Yes.

Q Do you see that individual here in court?

A Yes.

Q Would you point him out?

A The gentleman in the blue suit and polka dot tie.

MS. GAINNEY: Indicating the defendant Fernandez.

Q Did you advise him of anything upon his arrest?

A Yes.

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Q What?

A I advised him of his constitutional rights as set forth on a Government form.

Q Did you use this particular form -- withdrawn. In what manner did you advise him of those rights?

A Orally.

Q From any document?

A Yes.

Q From a Government form I had with me at that time.

Q Now, I show you Government's Exhibits 15-- right now Government's Exhibit 15 for Identification.

Can you tell us if you recognize that document?

A Yes.

Q What do you recognize it to be?

A The interrogation advice of rights form. I furnished it to Mr. Fernandez on November 3, 1976.

Q Did you advise him of his rights contained in that form?

A I read this form to him verbatim.

Q Did you advise him of his rights in any other matter -- withdrawn.

Was Mr. Fernandez advised of his rights in any other language?

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Q Yes.

Q What language was that?

A Spanish.

Q In what manner?

A He was furnished a copy of this form translated into the Spanish language.

Q Did Mr. Fernandez indicate whether or not he read Spanish?

A Yes.

Q Did he read a form in Spanish?

A Yes.

Q I show you Government's Exhibit 14 for Identification and ask you whether or not you recognize that document?

A Yes.

Q What would you recognize that to be?

A This is the Spanish language version of the form interrogation advice of rights I gave to Mr. Fernandez on November 3, 1976.

Q With respect to each of those forms, did you ask Mr. Fernandez whether or not he understood his rights as contained therein?

A Yes.

Q What did he say?

A He said yes, he did.

Q Did he indicate in any manner that he did understand his rights?

A Yes.

Q How was that?

A He signed the form.

Q Did he sign both of those forms?

A Yes.

THE DEFENDANT FERNANDEZ: What form?

THE COURT: Tell your defendant to keep quiet. Do not make statements in the courtroom.

MS. GAINNEY: I would offer these documents in evidence as Government's Exhibit 14 and 15 first showing them to counsel.

MR. GILMAN: May I have a voir dire?

THE COURT: I believe you better have a recess.

MR. GILMAN: Yes, your Honor.

THE COURT: Step out for five minutes.

MR. GILMAN: Can't we recess for the day, your Honor?

THE COURT: Just about for five minutes.

(The jury left the courtroom.)

MR. GILMAN: I want to apologize. I hope

1
2 your Honor has noted I tried throughout the trial
3 to keep my hot-tempered Spanish client quiet.

4 THE COURT: I understand. He's not going
5 to be penalized for it. But he's got to learn to
6 keep quiet. I don't mind lawyers jumping up and
7 down once in a while but I will not allow defendants
8 to do that. Once that happens the lack of respect
9 and dignity permeates the court and I won't permit
10 it. I smile all the time and I try to be kind to
11 everyone but never will I tolerate disrespect.

12 MR. GILMAN: Do you understand that,
13 Mr. Fernandez?

14 THE DEFENDANT FERNANDEZ: I am sorry, your
15 Honor.

16 THE COURT: Because I am not a stern
17 individual who looks like a tough hombre all the
18 time, that doesn't mean you should be disrespectful.

19 MR. GILMAN: I hope I haven't.

20 THE COURT: You are a lawyer, I understand
21 that.

22 MR. GILMAN: May we now recess for the day?

23 MS. GAINNEY: As soon as I finish the
24 testimony. I have another question or two.

25 THE COURT: Before we go to that, I waited

HS:jk
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2 THE COURT: Any questions?

3 MR. GILMAN: I have already asked my
4 questions.

5 THE COURT: All right, no questions.

6 You may step down.

7 Call your next witness.

8 MS. GAINEX: The Government calls Agent
9 Charles Boling to the stand.

10 C H A R L E S B O L I N G , called as a witness,
11 having been first duly sworn by the Clerk of the
12 Court, testified as follows:

13 THE CLERK: State your full name.

14 THE WITNESS: Charles K. Boling, B-o-l-i-n-g.

15 DIRECT EXAMINATION

16 BY MS. GAINEX:

17 Q By whom are you employed, sir?

18 A By the Federal Bureau of Investigation.

19 Q In what capacity?

20 A Special Agent.

21 Q Would you tell us how long you have been so
22 employed?

23 A Six and a half years.

24 Q Do you have any particular assignment with the
25 Federal Bureau of Investigation?

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A I am assigned to the truck hijacking squad.

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Q And were you so assigned and employed on May 8,

4

1976?

5

A Yes, I was.

6

Q On that day, were you in the vicinity of

7

Pitkin Wine & Liquor, at 911 East 108th St., Brooklyn, New York?

8

9

A Yes, I was.

10

Q Could you tell us what, if any, observations

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you made at that time and location?

12

A Yes, at approximately 1:00 p.m. I observed a

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1969 Plymouth sedan, green in color, being driven by a single white male, which was followed by a step van-type truck.

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Q Did you observe the male that was driving the

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green Plymouth?

17

A Yes, I did.

18

Q Did you know that individual?

19

A Yes, I did.

20

Q Did you know his name?

21

A Yes, I did.

22

Q What was his name?

23

A Anthony Ferrante.

24

Q Continue.

25

A The truck, as I stated, was following the sedan

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2 driven by Mr. Ferrante. It was proceeding eastward on
3 Flatlands Avenue.

4 Q Did you observe the individual driving the van?

5 A As it came to a stop off Flatlands Avenue and
6 East 108th St., I did.

7 Q Could you describe that van, please?

8 A Yes, it was a delivery-type van -- step-in van,
9 is what I refer to it as.

10 Approximately fifteen feet in length. It was
11 red and yellow in color. Had some writing, Long Island
12 Carpet Cleaning Corporation.

13 Q I show you Government's Exhibit 1 in evidence
14 and I ask you if you recognize that as depicted on that
15 photo?

16 (Document shown to witness.)

17 A Yes, this is the truck that I observed on that
18 day.

19 Q Now, you stated that you observed the individual
20 -- withdrawn.

21 You stated there came a point when you
22 observed the individual who was driving the truck. Did you
23 know his name at that time?

24 A No, I did not.

25 Q Have you since learned his name?

2 A Yes.

3 Q What is it?

4 A Vincent Frank Gamorta.

5 Q Continue.

6 A As I stated, the car and truck stopped on
7 East 108th St., at which time Mr. Ferrante exited the vehicle,
8 walked back to the truck and spoke with the driver of the
9 truck. Ferrante then walked to the back door of a liquor
10 store, attempted to open the door, which obviously was locked,
11 because he couldn't enter. Then he walked north on
12 East 108th St. to Flatlands Avenue, turned the corner, and
13 proceeded in a westerly direction and at that point I lost
14 sight of him.

15 However, I was told by radio from other agents --

16 Q Did you have a conversation with other agents?

17 A Yes.

18 Q Continue. Tell us what happened then.

19 A I was told --

20 MR. GILMAN: I would object to what he was told.

21 Q Without telling us the conversation, tell us
22 what you saw.

23 THE COURT: What did you do?

24 A Mr. Ferrante proceeded to the front of the
25 liquor store and about three minutes later came out of the

back door, walked over to the truck, spoke again with the driver, at which time the truck moved to the middle of West 108th St. and then backed up to the rear door of the liquor store. At that time Mr. Ferrante was in the back of the truck, the truck as I said backed up to the door. However, there was approximately a foot and a half to two feet from the truck to the premises. The driver of the truck never did come out of it, but walked through the truck to the back portion. At that time we approached the truck rapidly, identified ourselves, and entered the truck, secured Mr. La Morte, who was in the back, and then I entered the liquor store in an attempt to locate Mr. Ferrante.

Q Were you able to locate Mr. Ferrante in the liquor store?

A In the liquor store, I was not. I looked into the store rapidly, walked through, ran through rather, and I passed an individual in front who was not familiar to me, and asked him "Where's the other guy?"

Q Have you since learned the name of that individual?

A Yes, that was Seymour Weinberger, who was the owner of the liquor store.

Q After having a conversation with him, what did you do?

A Well, it wasn't actually a conversation. It was

Boling-direct

1 a passing comment in an effort to locate Ferrante, who I
2 felt at that time had exited the front of the building or the
3 store. Just as I arrived at the front door of the liquor
4 store, I met another agent who was coming in to the front and
5 he indicated that some of the people in the front of the
6 store --
7

8 Q Did there come a time when Anthony Ferrante
9 was apprehended?

10 A Yes.

11 Q Could you tell us what you observed in the
12 truck at that time?

13 A Oriental rugs.

14 Q Could you tell us what observations you made
15 in the liquor store at that time?

16 A Yes, when I first entered the back door portion,
17 there were several rugs in the entryway. I looked briefly
18 down a stairway, which was leading to the basement, and I
19 could observe numerous rugs just thrown down the stairway.

20 Q Did there come a time that you recovered those
21 rugs?

22 A Yes.

23 Q Approximately how many in number, do you
24 recall?

25 A I believe there were 56.

Boling-direct

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Q Do you recall seeing Government's Exhibits 10, 11, 12 and 13 on Friday? I won't unpack them now.

A Yes.

Q And had you ever seen those items before?

A Yes, I did.

Q Under what circumstances?

A They were at the liquor store on that day. I seized and initialled them, by the way.

Q Showing you Government's Exhibit -- I believe it was Government's Exhibit 9, a series of photographs --

THE COURT: Take them apart.

(Shown to witness.)

THE WITNESS: Would you repeat the question?

Q Showing you a series of photographs, do they represent the photographs that you recovered on the date in question?

A They represent the rugs that we recovered on that date, yes.

Q On May 8, 1976, did there come a time that you placed Vincent La Morte and Anthony Ferrante under arrest?

A Yes.

Q What was done with them subsequently?

A They were transported to our offices in Manhattan.

Q With respect to Vincent La Morte, did you

A.

Boling-direct

1 subsequently have a conversation with him?

2 A Yes, I did.

3 Q And when was the first time you and/or other
4 fellow agents had a conversation with Vincent LaMorte?

5 A Well, the first brief comments and discussions
6 were held at the liquor store. However, the first interview
7 as such was conducted at our offices on that same day,
8 May 8th.

9 Q Did there come a time that you received certain
10 information from Vincent La Morte?

11 A Yes.

12 Q When was the first time you and your fellow
13 agents received information from Vincent LaMorte?

14 A I believe that was on May 10th.

15 Q Where was Vincent La Morte at that time?

16 A At that time, he was in the Bellevue Hospital.

17 Q And what was Mr. La Morte doing in Bellevue
18 Hospital at that time?

19 MR. GILMAN: Objection.

20 MR. ROSENKRANZ: Objection.

21 THE COURT: Was he a patient, if you know?

22 THE WITNESS: Yes.

23 Q And as a result -- withdrawn.

24 Did you receive certain information from
25

Boling-direct

Mr. La Morte at that time?

A Yes.

Q And as a result of the information received, did you conduct an investigation?

A Yes, that's correct.

Q Could you tell us the nature of the investigation that you conducted?

A Mr. LaMorte had furnished the names --

MR. ROSENKRANZ: I would object to this.

THE COURT: As a result of that, what did you do?

A (Continuing) I conducted numerous telephone subscriber checks, obtained fingerprints from individuals, contacted truck running places, made numerous criminal checks, submitted various evidentiary matter to our laboratory in Washington, and so on and so forth.

Q How long did it take you to complete your investigation?

A Well, over six months.

Q Now --

MR. GILMAN: What was that?

THE WITNESS: Well over six months.

MR. GILMAN: If you put that microphone up, I won't have to ask you that.

THE WITNESS: Well over six months.

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Boling-direct
THE COURT: You are going to vibrate the
building that way.

Q Going back, you stated that you conducted an
investigation with respect to fingerprints.

Could you tell us specifically what was done?

A The truck that was recovered, the one shown in
Government Exhibit 1, was processed for latent fingerprints.

Also various items which were contained in the
truck were processed.

Numerous checks were made at the victim's
store --

Q Referring to Contour Enterprises in Jersey?

A That's correct.

These items were sent to our laboratory in
Washington.

Q Were there any fingerprints of value that were
picked up during the processing of the various areas that you
described?

MR. ROSENKRANZ: Objection. I do not know what
a value is.

MR. GILMAN: Nor do I.

THE COURT: Yes.

(continued next page)

Boling-direct-Gainey

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GR:BS

Q Any submittal fingerprints? Withdrawn. Any fingerprints, period? Okay.

A There were partial prints, smudges, so forth.

THE COURT: Were they of any value at all to you?

THE WITNESS: No.

THE COURT: Make any determination from them?

THE WITNESS: No, we could not.

THE COURT: All right.

Q Now, with respect to the fingerprint checks that were done, would you be able to ascertain anyone's fingerprints?

A No, we were not.

Q Were you able to ascertain the fingerprints of Vincent LaMorte?

A No.

Q Now, you said you conducted a fingerprint check -- withdrawn. You conducted an investigation with respect to truck rental places?

A Yes, that is correct.

Q What was that in reference to?

A In reference to the truck recovered on May 8.

Q Government's Exhibit 1?

A Yes, that is correct.

Boling-direct-Gainey

Q And did you determine where that truck had been rented from?

A Yes, I did.

Q And where was that?

A It was rented at Krieger Truck Rental Corporation, on Kingsland Avenue in Brooklyn.

Q And did you determine when that truck had been rented?

A Yes, on May 6, 1976.

Q Now, did you conduct an investigation with respect to any motor vehicles other than the truck?

A Yes, I did.

Q And could you tell us what that was?

A Of course. I rechecked the Plymouth sedan that Mr. Ferrante was driving, which reflected the owner, subscriber as Black Falcon Record Corporation, which I knew Mr. Ferrante was connected with. Also another check, Department of Motor Vehicles check was made in New Jersey regarding the vehicle or vehicles owned by Jose Garcia.

Q And what did that check reveal?

A It reflected that he owned a -- I believe it is a Chevrolet Nova. I am not -- I don't recall exactly the year, but I believe it was green in color.

Q And did there come a time that you received

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Boling-direct-Gainey

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information from Vincent LaMorte with respect to any names
of any individuals?

3

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A Yes.

5

6

Q Could you tell us what you did in connection
with those names?

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MR. ROSENKRANZ: Objection.

8

9

THE COURT: No. What did he do. That is all
right. What did you do?

10

THE WITNESS: I made --

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MR. ROSENKRANZ: Judge, to avoid an old cliché,
I think what the Government is doing is doing indirectly
what it cannot do directly.

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THE COURT: It is not indirectly. He cannot
tell us what they said and how he obtained it, but
he can tell us what he did. Whether or not he made
an investigation. All right. As a result of that
information?

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Q What investigation did you do?

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A Yes, I conducted numerous telephone subscriber
checks and criminal checks and so forth to identify --
further identify these names. One avenue I took was the
datebook which was recovered in Mr. Ferrante's car.

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Q Agent Boling, I show you Government's Exhibit 2
in evidence and ask you if you recollect that testimony?

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A Yes, I do.

3

Q Is that datebook that you were just referring

4

to that you used to make certain checks?

5

A Yes, that is correct.

6

Q All right. Was there any specific information

7

contained therein that you checked out?

8

A Yes, there was.

9

Q Would you tell us what that was, please?

10

A The book contains numerous names, telephone

11

numbers, various notations, among which there is a listing

12

for a Manuel at work with the telephone numbers. Also --

13

Q What was that telephone number?

14

A 535-2604. Also the address 404 East 66th

15

Street, with the number, it looks like 688-6435. Also the

16

name Manuel Fernandez and a notation about a bar at 56th

17

Street, First and Second Avenue. Also an entry for -- it

18

says Joe "Jew", at GR4-3035, and another entry for Jose,

19

(201) 854-3859.

20

Q Now, after conducting an investigation, with

21

respect to the information contained in that datebook, did

22

you have occasion to go to any of the addresses contained in

23

that datebook?

24

A Yes, I did.

25

Q And which address is that?

Boling-direct-Gainey

A 404 East 66th Street, New York.

Q Did you do -- I am sorry?

A New York.

Q And did you determine who lived at that location?

A Yes, I did.

Q Who was that?

A Manuel Fernandez.

Q Do you see that individual here in the Court?

A Yes, I do.

Q Would you point him out?

A First -- second individual from this end of the table.

Q Indicating the Defendant Fernandez, your Honor. And could you tell us what happened at that time when you -- withdrawn. First, when did you go to that location?

A I believe it was sometime during the early part of June, which I established he did reside at that location.

Q Could you tell us what happened when you --

MR. GILMAN: Excuse me. Was that early in June?

THE WITNESS: Yes, I believe so. Pardon me?

Q Could you tell us what happened when you went to that location?

1
6 2 A Yes. On June 10th, I returned and attempted
3 to contact Mr. Fernandez and he was notified. He came down
4 to the lobby, at which time I identified myself and another
5 agent, who was with me at the time, advised him the reason
6 for the contact and --

7 Q What did you tell him?

8 A Yes, I told him that we were investigating a --
9 a theft of oriental rugs at a store out in Princeton, New
10 Jersey. The subsequent arrest of three individuals who had
11 possessed these stolen rugs and the transportation of the rugs
12 from Jersey -- New Jersey to New York.

13 Q Did you have any further conversation --
14 withdrawn. Where did this conversation take place, by the
15 way?

16 A This was in the lobby of Mr. Fernandez' apartment.

17 Q And what did Mr. Fernandez reply when you
18 identified yourself and told him the nature of your investiga-
19 tion?

20 A He stated that he would speak with us, but that
21 he did not wish to do so in his apartment or in the lobby of
22 his apartment building. Suggested that we were only a block
23 or two from our office, and that we could walk to that location,
24 which he agreed to.

25 Q And did there come a time that he arrived at the

Boling-direct-Gainey

FBI Office?

A Yes.

Q And what happened at that time?

A Upon arriving, he again was made known what the reason of the contact was, and at that point, he was orderly advised of his rights as appeared on an FD 395, which is an Interrogation Advice of Rights form.

Q I show you Government's Exhibit A for identification and ask you if you recollect that piece of paper?

A Yes, I do.

Q What do you recollect it to be?

A This is an Interrogation Advice of Rights form, which was executed by me on June 10th, 1976, at our office.

Q And did you read what was contained therein to Manuel Fernandez?

A Yes, I did.

Q Did you ask him if he understood?

A Yes, I did.

Q And what did he reply?

A He stated that he did.

Q And did he indicate in any manner, that he understood those rights, other than his reply?

A Yes.

Boling-direct-Gainey

Q And how was that?

A By signing the form.

MS. GAINNEY: At this time, I would offer Government's Exhibit 17A into evidence as Government's Exhibit 17A, first showing it to counsel.

THE COURT: That is Fernandez, right?

THE WITNESS: Yes, your Honor.

MR. ROSENKRANZ: May I see it, please?

MR. GILMAN: Yes. May I have that when you are finished?

MR. ROSENKRANZ: Sure.

MR. GILMAN: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. GILMAN:

Q Mr. Boling, did you say that you read these rights orally to Manuel Fernandez?

A Yes, I did.

Q And after each right that you read to him, did he say he understood them?

A No.

MS. GAINNEY: That was not my question, after each right.

Boling-voir dire-Gilman

MR. GILMAN: I am only pointing at you.

MS. GAINES: I assume something is to follow,
Mr. Gilman.

Q On pain of being repetitious, did you say to
him -- well, before you gave him these rights, did you talk
to him?

A No, I did not.

Q Did you listen to his speech at all?

A I'm not sure I know what you mean.

Q Well, you told me, or at least you told the
prosecutor, that he came down to the lobby, and at that time
he said to you and your fellow agent that he would prefer
not to speak in the lobby, but would go with you wherever
you wanted to take him. Did you say that?

A Yes, I did.

Q So he did speak at that time?

A Yes, I asked him his name.

Q Did he speak at that time?

A Yes, he did.

Q Did you understand him?

A Yes, I did.

Q You did? Did he speak lucidly and clearly?

A He did speak with an accent. However, I was
capable of understanding him.

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Boling-voir dire-Gilman

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Q Would you say his English was good?

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A I wouldn't know how to rate that, on what

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scale?

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Q On a scale of zero to ten, where would you

6

rate his English?

7

MS. GAINNEY: Objection, your Honor. I think
that is speculative.

9

THE WITNESS: I was certainly able to understand
him. He does speak with a heavy accent.

10

11

Q You were quite confident that he understood

12

you?

13

A Yes, I was.

14

Q Because he said so?

15

A Yes, I was.

16

Q So will you tell me then, Agent Boling, what

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prompted you the following week to give him a Spanish set of
rights to sign?

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MS. GAINNEY: Objection. I don't think we have
even gotten that far.

20

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MR. GILMAN: I have gotten that far just now.

22

THE COURT: It is only on this piece of paper
at this time.

23

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Q Did you --

25

MS. GAINNEY: I suggest -- if counsel wish.s to

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Boling-voir dire-Gilman

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voir dire now on our future offerings, fine.

3

THE COURT: All right. Why don't you offer both of them now and he can voir dire.

5

MS. GAINNEY: Shall I offer all the them now, your Honor, and he can voir dire at one time?

6

7

THE COURT: Why not? Sure . It will save time.

8

MS. GAINNEY: I may have a few preliminary questions just to set the ground.

9

10

THE COURT: Sure. I will reserve on that piece of paper until you are completed.

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MR. GILMAN: Oh --

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THE COURT: Not yet. Let her do it now.

14

DIRECT EXAMINATION

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BY MS. GAINNEY: (continuing)

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Q Now, on June 21st, 1976, Agent Boling, did you have occasion to have a conversation with Manuel Fernandez?

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A Yes, I did.

19

Q Now, prior to that conversation with Manuel Fernandez, did you advise him of anything?

20

21

A Yes. He was again advised of his rights.

22

Q And how was he so advised?

23

A At first orally again and I believe, at that time, he was shown a Spanish version of the Advice or the Interrogation Advice of Rights form.

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Boling-direct-Gainey

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Q Now, I show you Government's Exhibit 18A and
3 and 18B, and ask you if you recollect them?

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A Yes, I do.

5

Q What do you recollect them to be?

6

A These are the forms which he was shown on that
7 date.

8

Q And were the rights contained therein, read to
9 him on that date?

10

A Yes, they were.

11

Q Now, at the completion of those rights, was he
12 asked if he understood?

13

A Yes, he was.

14

Q What did he reply?

15

A He replied that he did.

16

Q All right. And at the time you read him the
17 English form, what if anything was he doing with the
18 Spanish language form?

19

A He was looking at the form.

20

Q Going to August 11, 1976, did you again have
21 occasion to have a conversation with Manuel Fernandez?

22

A Yes, I did.

23

Q All right. Prior to that conversation, did you
24 advise him of anything?

25

A Yes. He again was advised of his rights.

DIRECT EXAMINATION

BY MS. GAINNEY (Cont'd):

Q What do you recognize it to be?

A This is the F.D. 395 which was furnished to Mr. Fernandez on August 11th.

Q On that date, did you read those rights to him?

A Yes, I did.

Q Did you ask him if he understood at the completion of the rights?

A Yes, I did.

Q What did he indicate?

A He indicated that he did.

Q Now, with respect to Government's Exhibit 17A. and Government's Exhibit 19A., other than replying orally that he understood what you had stated, did Manuel Fernandez indicate in any other form that he understood the rights contained therein?

A Are you referring to 17A.?

Q I'm mixed up.

A 18A.

Q I'm sorry, 18A.?

A 18A., and 19A., yes, he signed both waiver forms.

MS. GAINNEY: I would also offer these exhibits for identification into evidence as Government's Exhibits 18A., 18B., 19A., respectively showing them all to counsel.

VOIR DIRE EXAMINATION

BY MR. GILMAN:

Q Since Manuel Fernandez understood you so well in English, what prompted you to give him another form in Spanish?

A I really had no specific reason other than it was available. I had it handy at the time and though I felt he understood everything that was discussed --

Q It wasn't because he needed it?

A No, not really.

Q And then you talked to him and he gave you certain information?

A On which occasion are you speaking of?

Q Is that right?

A On which occasion are you speaking of?

Q On all of these occasions?

MR. GILMAN: I know, but now, just a minute, please.

MS. GAINEX: May I please finish my statement?

THE COURT: Just a minute. Only on the voir dire of these.

MR. GILMAN: I know I'm on the voir dire, your Honor.

THE COURT: Nothing else.

(Continued on next page)

BY MR. GILMAN (Cont'd):

Q He gave you certain information, is that right?

A Yes.

Q You speak Spanish?

A No, sir.

Q Was there anybody present who spoke Spanish?

A I don't believe so.

Q On any of these occasions of these interviews?

A We never spoke Spanish, but I don't believe anyone was there.

Q And was anybody there other than Manuel Fernandez who understood Spanish, as far as you knew?

A As far as I know?

Q As far as you know what?

A You asked me was there anyone there besides Fernandez that understood Spanish.

Q As far as you know what?

A No one was there.

MR. GILMAN: I object to all of these, your Honor, on the ground that it has not been established that these so-called rights were given or the signature of these papers was done either knowledgeably -- knowledgeably or intelligently, nor has it been demonstrated sufficiently well that Manuel Fernandez understood what was being asked

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Boling-direct

of him, other than to sign this paper.

THE COURT: Mark them in evidence.

THE CLERK: Government's Exhibits 17A., 18A.,
18B., and 19A., received into evidence.

(So marked)

MR. GILMAN: What are those numbers?

THE CLERK: The numbers are 17A., 18A., 18B.,
and 19A.. They are received in evidence.

BY MS. GAINNEY (Cont'd):

Q Now, going back to June 10th, 1976, on the
occasion of your first conversation with Manuel Fernandez, could
you tell us in substance what he said and -- what you said
and what he said?

A Yes. I explained again that we were investigating
a theft of oriental rugs from Kahn's Rug Store in Princeton,
New Jersey.

Q Well, prior to your continuing with the statement,
did you have the entire conversation with him at that time?

A Yes, I did.

Q Was that conversation subsequently reduced to
writing?

A Yes, it was.

Q I show you Government's Exhibit 17B. for identi-
fication, and ask you if you recognize it?

Soling-direct

A Yes, I do.

Q What do you recognize it to be?

A This is the results of the interview with Mr. Fernandez on June 10th.

Q And is that a true and accurate reflection of the conversation you had with Manuel Fernandez on June 10th, 1976?

A Yes, it is.

MS. GAINEX: Perhaps, your Honor, to save time at this poin --

MR. GILMAN: Wait a minute. Has that been marked in evidence, your Honor?

MS. GAINEX: It's for identification.

THE COURT: For identification?

MS. GAINEX: I haven't offered it yet.

THE COURT: For identification.

MS. GAINEX: Perhaps to save time, I will offer for identification all of the conversations we intend to go into?

THE COURT: For identification, yes.

BY MS. GAINEX (Cont'd):

Q And going to the conversation that you had with Manuel Fernandez on June 21, 1976, was that subsequently reduced to writing?

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Boling-direct

A Yes, it was.

Q And I show you Government's Exhibit 18C. for identification and ask you if you recognize that?

A Yes, I do.

Q What do you recognize that to be?

A This is the results of the interview on that date with --

MR. GILMAN: I object to the word "results," your Honor.

THE COURT: That is -- you reduced it to writing?

THE WITNESS: Reduced it to writing.

MR. GILMAN: Reduced to writing. I object.

THE COURT: Conversation between the two of them he said, he reduced to writing, a report?

THE WITNESS: Yes.

THE COURT: A report?

THE WITNESS: Reflects the conversations we had on the date.

BY MS. GAINES:

Q It is a true and accurate reflection thereof?

A Yes.

THE COURT: No. That is something else. All right. Go ahead.

Q Now, did you have a conversation with Manuel

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Fernandez on August 11th, 1976?

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A Yes, I did.

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Q And was that reduced to writing?

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A Yes, it was.

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Q I show you Government's Exhibit 19B. for identification, and ask you if you recognize that?

8

A Yes, I do.

9

Q What do you recognize that to be?

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11

A The reduced portions of our conversation on that day.

12

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Q Is that a true and accurate reflection of the conversation that you had with Manuel Fernandez on August 11th, 1976?

15

A Yes, it is.

16

17

Q Now, did there come a time on November 3rd, 1976, that you had a conversation with Manuel Fernandez?

18

A Yes, I did.

19

20

Q And prior to that conversation, he had been advised of his rights by Agent Rod Kosednar?

21

A Yes, he was.

22

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Q And this conversation that you had with Manuel Fernandez on November 3rd, 1976, was that subsequently reduced to writing?

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A Yes, it was.

Boling-direct

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Q I show you Government's Exhibit 20 for identification, and ask you if you recognize that?

A Yes, I do.

(Continued on next page)

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Boling-direct

Q What do you recognize that to be?

A The results of that conversation on this date.

Q Is that a true and accurate reflection of the conversation that you had with Manuel Fernandez on November 3, 1976?

A Yes, it is.

MS. GAINEY: All right. I would offer all of these documents into evidence as Government's Exhibits 17B, 18C, 19B and 20, first showing all to counsel.

MR. GILMAN: May I have a voir dire your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. GILMAN:

MR. GILMAN: Did --

MR. ROSENKRANZ: May I see them?

Q Did Manuel Fernandez sign those?

A No.

Q Any one of them?

A No, he did not.

Q Did you ask him to sign them?

A No, I did not.

Q The language was yours, wasn't it?

A I'm not sure, if I know what you mean.

Boling-voir, dire-Gilman

Q The language that appears in those so-called reports, that's your language, isn't it?

A I put it in words.

Q Yes?

A I took the words and so forth.

Q You translated it into what you thought it was; is that right?

A No, that's not correct.

Q Then you didn't translate it into what you thought it was; is that it?

A I reduced the conversation that we had on that date with Mr. Fernandez into writing.

Q Verbatim conversation?

A When it was appropriate, yes.

Q Verbatim?

A As best I could, yes.

Q His language verbatim?

A Where appropriate, yes.

Q What was verbatim, his date of birth?

MS. GAINES: I'm sorry. I didn't hear the question.

Q His date of birth; is that what you mean?

A Of course, any facts that he gave were put down or reduced to writing in that form.

Boling-voir dire-Gilman

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Q And then before he left, did you show him that paper that you had?

A No. It was not distributed at that time.

Q Did you ever show it to him?

A No, I did not.

MR. GILMAN: I object to all of them your Honor.

THE COURT: Sustained. They are not admissible.

They are not admissible.

MS. GAINNEY: Not?

THE COURT: No. You may question him but they are not admissible.

MS. GAINNEY: As to the contents they are in your Honor?

THE COURT: Not at this point in any event.

MS. GAINNEY: I would ask that your Honor reserve decision on that point at this time.

THE COURT: I will reserve decision if you want me to but it's not admissible at this point.

MS. GAINNEY: Okay. May I have them please?

MR. GILMAN: I think I have them now. Do I have them?

MR. ROSENKRANZ: No. I have them.

MS. GAINNEY: The ones that are in evidence.

MR. GILMAN: Those are yours?

Boling-direct

MS. GAINEX: Yes.

DIRECT EXAMINATION

BY MS. GAINEX: (continued)

Q Now, going back again to June 10, 1976, would you please tell us the conversation that you had with Manuel Fernandez on that date?

MR. GILMAN: I object.

Q Using the report thereof to refresh your recollection, if necessary --

THE COURT: She may do that.

MR. GILMAN: I object if your Honor please on the ground -- may I?

THE COURT: Yes.

MR. GILMAN: On the ground that there has been no basis laid for his using any report because he has not as yet told us, anybody, that he has no independent recollection of what happened on that date and until and unless he says that he has no recollection and cannot tell us what happened, without reading that report, he should not be permitted to read from the report your Honor.

MS. GAINEX: Your Honor --

THE COURT: Do you need the report in order to assist you in responding to the question?

1 THE WITNESS: Through four interviews, I would
2 say yes.

3 MR. GILMAN: I don't hear you.

4 THE WITNESS: Yes.

5 MR. GILMAN: You have no indepedent recollec-
6 tion?

7 THE WITNESS: Not with all the detail that is
8 contained in --

9 MR. GILMAN: I object your Honor.

10 THE COURT: I'll allow it. You may look at
11 them and refresh your recollection and answer the
12 questions.

13 All right.

14 MR. GILMAN: Exception, please.

15 THE WITNESS: I'm sorry?

16 Q Again, would you please tell us the conversation
17 that you had with Manuel Fernandez on that date, meaning
18 June 10, 1976?

19 THE COURT: Don't read it. Just look at it.
20 What he said to you and what you said to him.

21 A Yes. On June 10, again, he was advised of the
22 reason -- of the contact or of the interview, told of the
23 facts surrounding -- well, not told but mentioned that our
24 investigation was -- stemmed from an armed robbery of oriental
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Boling-direct

rugs in Princeton, New Jersey on May 6 and that the subsequent arrest of three individuals and Anthony Ferrante, Vincent LaMorte and Seymour Weinberger in a liquor store in Brooklyn, New York.

He was asked if he knew an Anthony Ferrante, also known as Anthony Elk. He stated that he knew several Anthonies but did not know all their last names.

He was shown a photograph of Mr. Ferrante and stated he did not know him.

MR. GILMAN: Excuse me. I object, if your Honor please. I think the witness is making a misstatement. I think --

MS. GAINNEY: Objection your Honor.

MR. GILMAN: Excuse me. I object your Honor on this ground.

MS. GAINNEY: He may cross-examine.

MR. GILMAN: I object your Honor under this ground, if I may. He looked at the photograph, says the witness, and he said he didn't know Mr. Ferrante. What the witness said obviously from that paper is that he didn't recognize that photograph as being anyone he knew.

MS. GAINNEY: I would object. Counsel is interpreting the statement and not asking the witness

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Boling-direct

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for his answers. He can make any argument that he likes to.

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MR. GILMAN: I think that's so prejudicial.

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THE COURT: Is that your answer?

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THE WITNESS: Yes. He told me he didn't know Mr. Ferrante.

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THE COURT: Didn't know him after looking at the photograph?

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THE WITNESS: Yes.

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THE COURT: That's the answer.

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MR. GILMAN: May I call for that photograph on a voir dire now?

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THE COURT: No. Let her complete --

15

MR. GILMAN: I think I'm entitled to a voir dire on that photograph your Honor. I'd like to see that photograph.

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THE COURT: You will. If they have it, you'll see it but not right now. She has a right to examine. He has a right to say what his conversation was.

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MR. GILMAN: How do we know whose photograph that was?

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THE COURT: You'll have to find out eventually. If you don't -- you don't know a lot of things until you find out.

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Boling-direct

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MR. GILMAN: Don't you think it's the
Government's job to do that?

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MS. GAINES: I suggest if counsel has any
argument to make --

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THE COURT: We can discuss it all day long.
I have made my ruling. Let's go.

8

Q Thank you. Continue telling us the conversa-
tion that you had after showing Mr. Fernandez the photograph
of Anthony Ferrante?

11

A Yes. It was also mentioned or he was also
asked if he had any knowledge of a First Avenue botique called
The Morning After, and he stated that he had, that he had
purchased clothes at this location. He was asked if he knew
anyone at the location by the name of Thomas Anavim.

16

He was then shown a photograph of Mr. Anavim, which
he identified as being identical to a person who he knew
as Tommy but did not know his last name. He was then asked if
he knew an individual by the name of Vincent Frank LaMorte
also known as Sonny, and he stated that he knew no one by
that name.

22

He was also asked if he knew an individual by the
name of Joseph Schnitzer, who was also known as Joe the Jew.
He advised that he did not know this individual and he again
was shown a photograph, at this time of Mr. Schnitzer, and

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boling-direct

stated that he possibly had seen him in a bar in Manhattan.

Q Did you ask Mr. Fernandez what business he was in?

A Yes, I did.

Q And what did he tell you?

A He mentioned that he was a rug repairman and furnished the location of his employment as the Pillowry on 929 Madison Avenue, in New York.

(cont'd on next page)

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Q Now, did there come a time on June 21st, 1976 that you again had a conversation with Manuel Fernandez?

A Yes.

Q Could you tell us what was stated at that time?

A He was asked questions pertaining to this investigation at which time he referred to he had been a good friend of Robert Kahn who was the owner of Kahn Rugs in Princeton, New Jersey and he had sold -- excuse me, he purchased rugs approximately two years ago from Mr. Kahn and advised he had not seen Kahn since that last purchase.

He mentioned other individuals, which includes Habib Anavim, who had also been a victim of a rug robbery. His store is on Madison Avenue.

He mentioned generally Armenian and Persians were involved in this rug business and also mentioned that Tommy Anavim, again the operator or owner of the Morning After, had purchased or rented rugs from Robert Kahn in the past.

He mentioned certain facts with respect to Mr. Anavim's operation at the First Avenue Boutique.

He mentioned certain facts about an individual identified as Berge, I will spell the last name phonetically, A-B-J-A-I-A-N, also an Oriental rug dealer in Manhattan.

Q Did Mr. Fernandez -- withdrawn.

Did you have any conversation with Mr. Fernandez

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Boling-direct

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about thefts of Oriental rugs?

3

A Yes.

4

Q What did he say?

5

A He mentioned in his estimation or opinion that

6

all Oriental rug dealers, whether Armenian or Persian, bought

7

and sold stolen rugs.

8

On many occasions these stolen items are shipped

9

out of the country either to Europe or Persia.

10

Q Could you continue telling us what other conversation you had with Mr. Fernandez at that time?

11

12

A He mentioned an individual by the name of

13

Houssang Lavi, who he identified as a millionaire buyer of

14

Oriental rugs who resided in Woodbury, Long Island.

15

And he further mentioned that this location or

16

residence, Lavi's residence, is loaded with very expensive

17

silks and this same person is a close associate of Tommy

18

Anavim from the First Avenue Boutique, the Morning After.

19

Q Was Mr. Fernandez shown any photographs on that

20

occasion?

21

A Yes, a photographic display consisting of ten

22

photographs.

23

After reviewing photographs he identified a

24

photograph of an individual by the name of Danny Cardebat, and

25

advised that he had seen this individual in the Morning After

1
2 the First Avenue Boutique again on different occasions and
3 knew the same person as a rug thief who was paid by the buyers.
4 In other words, on a contractual basis to steal these rugs.

5 He identified the photograph of Joseph Smith as
6 being identical with an individual who he had known as Joe and
7 met at the Manana Restaurant in Manhattan.

8 He mentioned the conversation that he had with
9 Joe during this meeting, that Joe was interested in going into
10 the Oriental rug business and that he desired to open up a
11 shop and that he was interested in Mr. Fernandez to operate it
12 for him.

13 Aside from that, he said he knew nothing further
14 regarding Schnitzer.

15 He identified a photograph of Anthony Ferrante
16 as identical to a person he knew as Tony and met with Joe
17 Schnitzer at a First Avenue shop located at 61st Street in
18 Manhattan.

19 He further mentioned that he had never acted
20 as an appraiser of Oriental rugs or any rug or any items for
21 Tony or Joe.

22 Q Did you discuss the robbery of Kahn's Rug Store
23 in New Jersey with him at that time?

24 A Yes.

25 Q What did he say to you?

4 1
2 A He stated that he recently heard different
3 conversations from people who were not identified with regard
4 to the arrest in the Kahn Rug robbery.

5 He stated speculation was that the individual
6 who set up the robbery was the person who was to initially be
7 the buyer of the stolen rugs. He said that apparently that
8 that individual who was not identified because of his close
9 association with Kahn decided to back out of the purchase of
10 these rugs and the hot load or the stolen rugs were subsequently
11 sold to the person at the Morning After.

12 He felt that the original buyer became jealous
13 because he missed the opportunity to purchase the rugs that he
14 then tipped off the FBI to the location of the stolen rugs..

15 Q Did there come a time -- withdrawn.

16 By the way, on the date of that statement,
17 June 21, 1976, how did Manuel Fernandez appear at the FBI
18 office?

19 A I'm not sure I follow what you mean.

20 Q Did you meet him at his home?

21 A No. He voluntarily came into our office. He
22 contacted us from our lobby, at which time I went down to the
23 lobby and escorted him up to our floor which contains our
24 squad.

25 Q Did there come a time again on August 11, 1976,

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that you had a conversation with Manuel Fernandez?

A Yes, that is correct.

Q Could you tell us what that conversation was?

A Yes, he again came into our office and during that conversation he mentioned and named numerous individuals connected in the Oriental rug business with regard to thefts in the New York metropolitan area.

He mentioned that an individual named Abraham Garabedian, spelled phoenetically, was a buyer, at least he felt that this person was almost certain the buyer of the rugs and assorted antiques stolen from the Anavim Galleries on Madison Avenue in New York.

Q Did you have a conversation with Mr. Fernandez about Edward Shamash at that time?

A Yes, I did.

Q What was that conversation?

A He had mentioned that this individual, Edward Shamash was a former partner of his in a rug store located on Third Avenue in Manhattan. This went back approximately five or six years ago.

He advised me he had traveled with Shamash and had stopped at Robert Kahn's store at Princeton, New Jersey about three years ago and had taken rugs on consignment from Kahn.

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Q Did there come a time on November 3, 1976, that Manuel Fernandez was arrested?

A Yes, that is correct.

Q Subsequent to his arrest, did you have a conversation with him?

A Yes, I did.

Q Was that after he was advised of his rights by Agent Ron Kosedner?

A Yes.

Q Could you tell us the conversation you had with Mr. Fernandez at that time?

A Yes, at that time, Mr. Fernandez stated that he had not taken any rugs from the premises of Robert Kahn's Rug Store in New Jersey.

However, approximately six months ago he had accompanied two men to Brooklyn for the purpose of appraising rugs and that he had later determined them to be stolen from the store owned by Robert Kahn.

He recalled that six months ago he received a telephone call from Joe Schnitzer and Tony Ferrante who asked him to act as appraiser for some rugs so they wouldn't be cheated in the sale of these rugs.

He mentioned he drove in an old blue car driven by Schnitzer and accompanied by Ferrante to Brooklyn somewhere

1
2 near the Brooklyn Bridge. He recalled that the rugs were
3 contained in the rear of a truck parked somewhere near the
4 bridge and the truck had the name of a carpet company on it.

5 He recalled that he looked at the rugs sometimes
6 during the morning hours and there were approximately 48 rugs
7 rolled up in the rear of a truck.

8 Q Did he mentioned whether or not anyone else was
9 present at this location besides himself, Tony Ferrante and
10 Joe Schnitzer?

11 A Yes, he mentioned also present was Tommy Anavim.
12 And advised that the rugs were worth between 30,000-40,000,
13 and no one in the truck or at the truck opened the rugs for
14 him to inspect.

15 He further mentioned that Ferrante was attempt-
16 ing to sell the rugs to Tommy Anavim and that he again stressed
17 that his presence was merely to act as an appraiser of these
18 rugs which he thought were hot but emphasized he did not
19 participate in any theft of them.

20 He was shown a series of photographs and he
21 identified Joseph Schnitzer, Tony Ferrante, and Paher Annavim,
22 as being present on this occasion.

23 Q Did you discuss with Mr. Fernandez whether or
24 not he was paid for his appraisal of these rugs?

25 A Yes, he mentioned that he was to receive \$100

1
2 from Tony Ferrante and another \$100 from Tommy Anavim for
3 this appraisal.

4 Q Did he indicate how he came to know Anthony
5 Ferrante?

6 A Yes, he mentioned that he met Anthony -- Tony
7 Ferrante sometime ago in the Morning After when Mr. Fernandez
8 was in the establishment buying clothes.

9 He mentioned that Ferrante was in a conversation
10 with Anavim and he was asked by these individuals if he
11 bought carpets. He advised that he replied to them that he
12 did and was told by these individuals if he saw any good rugs,
13 carpets, whatever, that for this information he would receive
14 ten per cent from the sale of these rugs if they were obtained.

15 He further mentioned that subsequent to the
16 recovery of a portion of Mr. Kahn's rugs in the home of
17 Tommy Anavim that Anavim called Mr. Fernandez and stated:
18 "I will kill you, you son of a bitch. You told the FBI I had
19 stolen carpets in my house."

20
21 (Continued on next page)
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Q Now, did you have any conversation with Mr. Fernandez with respect to a Larry Forlano?

A Yes, on that same date, November 3rd, he mentioned that Larry Forlano, F-O-R-L-A-N-O, was the owner of Lawrence Forlano Rugs on Madison Avenue.

He had played a part in setting up of the theft of Robert Kahn's rugs.

He mentioned that Forlano was a partner, -- excuse me -- was a partner of Shamash and that also he was a very good friend of Kahn. That is Robert Kahn. And they both knew all the merchandise Mr. Kahn had at his store and Forlano had been at Kahn's shop on numerous occasions recently and was always speaking of his inventory.

Q Whose inventory?

A Of Mr. Kahn's inventory.

Q Now, did there come a time, Agent Boling, that you attempted to ascertain the specific address of where the rugs had been stored after they had been stolen from New Jersey?

A Yes, that is correct.

Q Could you tell us how this attempt was made?

MR. GILMAN: What?

MS. GAINES: How the attempt was made.

A The location was being pointed out to us by

Mr. LaMorte.

Q Where did you ascertain that this location was?

A He directed us to 20 Adelphi Street in Brooklyn,
New York.

Q Could you describe that location?

MR. GILMAN: May we have the time and date when
that was done?

THE COURT: If he knows.

Q Do you know?

A I believe it was January 6th of 1977.

Q Could you describe the area or the location of
20 Adelphi Street?

A Yes. It is a semi-residential area with light
industry and business, a one-way street southbound inbetween
Flushing Avenue and Park Avenue near the Brooklyn Navy Yard.

MS. GAINES: I have no further questions.

CROSS-EXAMINATION

BY MR. ROSENKRANZ:

MR. ROSENKRANZ: May I have the book taken from
Mr. Ferrante or Mr. Ferrante's car?

THE WITNESS: Here it is (indicating).

Q When was that book found in Mr. Ferrante's car?

A On the date of his arrest.

Q When was that?

1 the Defendant.

2 THE COURT: In this case, it was taking money
3 from the bank and the one he pleaded guilty to or
4 was found guilty on, was an attempted burglary.

5 MR. GILMAN: Then I would ask YOur Honor to
6 have the Defendant sworn and for Your Honor to hear
7 him on the question of the crime and the time.

8 THE COURT: You want me to do it? It is all
9 right with me.

10 MR. GILMAN: May I interrupt?

11 THE COURT: If you think so. I will apply the
12 principles.

13 THE CLERK: Shall we let the jury walk around
14 a bit?

15 THE COURT: Yes.

16 M A N U E L F E R N A N D E Z-M A R I N, one of
17 the defendants herein was sworn by the Clerk
18 of the Court and testified as follows:

19 THE WITNESS: I live at 404 East 66th Street,
20 New York City.

21 MR. GILMAN: Is it all right if I inquire from
22 here?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MR. GILMAN:

1
2 Q Manuel Fernandez?

3 A Yes.

4 Q Approximately five years ago you pleaded guilty
5 to a crime, did you not?

6 A Yes.

7 Q What date was that, if you remember?

8 A I don't remember very well.

9 Q How long ago was it?

10 A About six years now.

11 Q Six years?

12 A Yes.

13 Q Where was it you pleaded guilty?

14 A I pleaded guilty in Kew Gardens Court in
15 Queens.

16 MR. GILMAN: Will Your Honor take note that the
17 Government very kindly has handed me an extract from
18 the minutes of that situation wherein it's indicated
19 that on September 28th, 1971, Manuel Fernandez
20 pleaded guilty to an attempted burglary in the
21 third degree, February 18, 1972, which is a little
22 more than five years ago. He was put on probation
23 for five years.

24 That the original indictment was burglary in
25 the third degree and grand larceny in the second

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degree, and that the plea and conviction was had before Albert H. Bushmann who was at that time a Justice of the Supreme Court sitting in Queens County.

Q Manuel, I want you to tell His Honor the background of the facts that resulted in your pleading guilty to this charge as clearly as you can?

A Three of four Italian men -- one of the Italian men came into my house --

Q Were you working at that time?

A Yes.

(Continued on next page.)

1
2 Q Who were you working for?

3 A I was a silent employer, I had a little
4 business. A small one.

5 Q You said three or four Italian men --

6 A Came into my house one day if I am interested
7 in buying Persian carpet. I think so. I think I make some
8 money. I be interested in buying, yes. He called me
9 10 o'clock in the night and took me to a warehouse.

10 Q How did you get there?

11 A He gave me the address of the Long Island
12 Rug Renovators, carpet cleaner. The guy sold me three
13 or four carpets --

14 Q Showed you or sold you?

15 A Showed me on the floor. If I was interested
16 in buying. I said " I don't know." Before I started any
17 business the police come in and arrest everyone over there.

18 I went -- I don't speak English very, very much
19 at that time. I went to Kew Gardens Court. I am
20 very nervous and this man, the lawyer promises --

21 Q What man?

22 A Mike Burn.

23 Q Was he a defendant?

24 A The lawyer of the defendant.

25 Q The lawyer was named Mike Burn?

A 152

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A No.

Q The lawyer was --

A Michael Burn. He told me "You plead guilty I give you five years probation." I said, "What do you mean probation." He said "You no go to jail." I said "I do anything you want."

Q Was he the lawyer who represented the other fellows?

A Yes. I pay no money.

Q YOU didn't?

A "You no need to pay a fee, all you do is plead guilty and I will get you five years probation."

I said' I will do that."

Q That is what you did?

A Yes sir. This is true, I swear.

THE COURT: How can I keep it out? It comes within the whole five essentials of the ruling of the Court.

Mr. GILMAN: Did you say you have to keep it out?

THE COURT: No, it is admissible.

MS. GAINES: I suggest the Defendant can make whatever explanation he wishes to make.

THE COURT: I am weighing the prejudice and the

1
2 probitive value.

3 MR. GILMAN: Would this show his credibility
4 was not good?

5 THE COURT: Under the charge itself, it has
6 more probitive value than prejudice.

7 MR. GILMAN: Does that attack his credibility,
8 what he just said?

9 THE COURT: Sure. Not as far as admitting
10 the crime but as far as denying the other crime --
11 that is what we are talking about.

12 MR. GILMAN: He's not going to deny the other
13 crime.

14 MS. GAINLEY: Why --

15 THE COURT: He pleaded guilty.

16 MR. GILMAN: I am saying the Government should
17 not be permitted to go any further than was he
18 convicted by way of a pleading to attempted burglary
19 in the third degree six years ago.

20 THE COURT: What did that involve?

21 MR. GILMAN: Then I take exception.

22 THE COURT: It could be anything, even taking
23 candy from a baby. Once he says yes, then she can
24 go into the background of it.

25 MR. GILMAN: I take exception,

1 THE COURT: Alternate Juror No. 1, please
2 take Seat No. 1. You will be the foreman. The
3 defendant Fernandez case--

4 MR. ROSENKRANZ: The defendant Garcia rests.

5 MR. GILMAN: The defendant Fernandez rests.

6 THE COURT: I must ask you to step out for a
7 few minutes, and I will bring you right back.

8 (Jury leaves the courtroom.)

9 THE COURT: Motions.

10 MR. ROSENKRANZ: On behalf of the defendant
11 Joseph Garcia the defendant moves for a judgment of
12 acquittal as to each count of the indictment, Counts
13 1, 2, and 3, on the grounds that the government has
14 failed to prove his guilt beyond a reasonable doubt.

15 THE COURT: All right.

16 MR. GILMAN: I make that same motion on behalf
17 of the defendant Fernandez.

18 THE COURT: The motions are denied.

19 The Court finds there is sufficient for it
20 to go to the jury.

21 (Jury present)

22 THE COURT: This is the final stage of the
23 proceedings. The lawyers will now address you in
24 summation and discuss with you what they believe
25 has been proven or not proven.

1 MR. GILMAN: May I take a position where I
2 may hear Miss Gainey?

3 THE COURT: Yes, you may.

4 MR. GILMAN: Thank you.

5 MS. GAINNEY: May I?

6 THE COURT: You may.

7 MS. GAINNEY: Judge Costantino, Mr. Gilman,
8 Mr. Rosenkranz, ladies and gentlemen of the jury:

9 Before I begin my closing remarks to you,
10 let me take this opportunity to thank you for the
11 patient attention you have displayed in listening
12 to the testimony in this case.

13 My purpose here is to kind of analyze the
14 evidence that came before you, to reason with you,
15 a sort of reasoning together process, about the
16 testimony that you heard, about the exhibits that
17 you saw, or will have an opportunity to see once
18 you get into that jury room, and in analyzing the
19 testimony that you heard, first let us deal with
20 the government's first, and concededly most important
21 witness, Vincent LaMorte.

22 As has been made abundantly clear throughout
23 this trial, Vincent LaMorte has not led a virtuous
24 life, and no one is trying to present him here
25 as any type of saint, and you may be saying to

1 yourselves, "Why should we believe him? Why,
2 based upon what he said, should we come to the
3 conclusion that these defendants, Jose Garcia
4 and Manuel Fernandez are guilty?"

5 Well, consider that if the government could,
6 we would bring witnesses like yourselves, upstanding
7 citizens, law-abiding people, here to tell you
8 about the facts that -- of the crime that you heard
9 during the course of this trial.

10 What does logic tell you about a criminal
11 enterprise? What does logic tell you if you are
12 dealing with the facts of a robbery and the
13 transportation of the goods that were stolen as a
14 result of that robbery? The concealment of these
15 goods, the organization of this entire scheme?

16 What does logic tell you about how you're
17 going to get to the center of that type of
18 operation? Who can supply you with the nitty-
19 gritty of what went on during that entire time?

20 Common sense tells you, only someone else
21 who was involved in it can get behind the entire
22 scheme to see who organized it, who didn't neces-
23 sarily do the dirty work, a participant is the
24 only one that can tell you that.

25 Now, sure you might not like to have Vincent

1 LaMorte over to dinner, but examine his testimony
2 and see if there was any motive established that
3 he had to lie before you.

4 Plenty of motive to testify, but see if there
5 was any motive to testify falsely.

6 When you get into that jury room, I'm sure
7 you will be asking yourselves, "Why does a person
8 do certain things? Why does he say certain
9 things? Why does he react in a particular way?"

10 No doubt about it, the facts are before you,
11 that when Vincent LaMorte came in here and faced
12 you, the jury, from that witness stand, first faced
13 these defendants, Joseph Garcia and Manuel Fernandez,
14 he had a reason, a reason to testify. Not because
15 he is Joe Doe, upstanding citizen. He had something
16 to gain from the testimony.

17 Let's consider Vincent LaMorte, the man. A
18 man who has led virtually -- not virtually, he has
19 led a criminal life. No doubt about it. A man who
20 has instincts, whose every-day experiences lead him
21 to shy away from the police, to avoid the police.

22 You saw those instincts still working when
23 he was first arrested. He didn't help them out then.
24 He told them that his name was Robert Conte. He is
25 avoiding the police. The police and the FBI are not

1
2 his friends. So you have to consider what was the
3 turning point that brought Vincent LaMorte before
4 you as a cooperating government witness.

5 Now, remember Vincent LaMorte was down and
6 out, caught red-handed in possession of these stolen
7 oriental rugs, lying up there in the hospital.

8 You remember it was not until he was in the
9 hospital that he first started to cooperate with
10 the government.

11 Ask yourselves what you know from your common
12 sense and everyday experience about turning points
13 in the lives of people who are in the hospital.

14 When he was down and out, that's when Vincent
15 LaMorte made that one hundred and eighty degree
16 turn. He made a decision in that hospital.

17 He weighed the advantages of testifying
18 against the disadvantages of testifying and surely
19 the advantages of not testifying for him were slim
20 and none.

21 So he made a deliberate decision to cooperate
22 with the government to make a deal with them.
23 Plenty of motive for him to testify, but where has
24 it been established that he had any reason to falsify
25 his testimony about, of all people in the world,

1
2 Jose Garcia and Manuel Fernandez?

3 What did he do? Pick these names out of a
4 hat?

5 He was on that stand for two days subject
6 to the cross-examination of two skillful attorneys.

7 Did they establish one motive for him to
8 testify falsely? And you can believe it would
9 have been brought out.

10 For example, let's again go to your everyday
11 experiences. People don't do something, people
12 don't lie about somebody without any reason.

13 By way of example, I would say to you --
14 this is just hypothetical and there was no evidence
15 of this -- suppose it had been shown that there
16 was bad blood between LaMorte and the defendants,
17 or that Manuel Fernandez was fooling around with
18 his wife or he had some grudge with Jose Garcia, then
19 you could go into that jury room and say, "He has
20 a reason to lie about these two. He is mad at
21 Fernandez, he is mad at Garcia, he is going to get
22 them if it's the last thing he does."

23 Didn't the testimony of LaMorte establish
24 just the opposite? Especially when he testified
25 about Jose Garcia. He told you that when it came

1
2 to committing the robbery itself, Jose Garcia got
3 cold feet. He had bad vibes about him.

4 As it turned out, his premonition was abso-
5 lutely correct. He had some kind of clairvoyance
6 at that time because eventually he was caught, but
7 be that as it may, he doesn't try.

8 If he had some grudge, that he was trying
9 to burn this man and bury him, he'd say that Jose
10 Garcia charged in there at the forefront, brandish-
11 ing the gun, terrorizing Mrs. Lariche. He doesn't
12 try to make Garcia the heavy; he doesn't minimize
13 his involvement, nor does he maximize it.

14 Ask yourselves, is that the testimony of
15 a man lying?

16 Again, no reason shown for him to lie, of all
17 the people in the world, against these two
18 defendants.

19 Now, consider also the barrage of questions
20 that were thrown against LaMorte on cross-examination.
21 Anything to make you think he was lying, even chang-
22 ing his story from one day to another.

23 Remember Mr. Gilman asked, "Didn't you say
24 yesterday that Manuel Fernandez had his jacket
25 off in that bar that morning?"

1
2 LaMorte said, "No, I didn't. I told you that
3 he had his jacket removed that night when he was
4 counting the rugs and checking out the rugs at
5 the drop."

6 Mr. Gilman: "Are you telling this jury that
7 you didn't say that?"

8 "Well, let's go to the record. We'll get
9 back to the record later." And he never did.

10 Let's go to that record now and see whether
11 or not Vincent LaMorte knew what he was talking
12 about.

13 Mr. Gilman: "Did I hear you testify yester-
14 day that on the morning of the robbery Manuel
15 walked into this bar with his overcoat and jacket.
16 on? Do you remember that?"

17 "He had it on. He had it off when he was in
18 the warehouse when he was checking the rugs."

19 We go to LaMorte's testimony on the day
20 before and he says, "There was a German shepherd
21 there, I almost stepped on him. I went to the back
22 and opened the back door of the truck. Tony was
23 already there, and I started to make an attempt
24 to count the rugs, and Tony said, 'Forget that.'
25 He says, 'I will take care of it,' and at that time

1
2 Manuel came in, took his overcoat and jacket off,
3 and went into the truck and was looking at the rugs,
4 checking them out, and separating them."

5 Didn't Vincent LaMorte know what he was talk-
6 ing about, and again, trying to make a liar out of
7 him, the question was thrown to him:

8 "Didn't you tell the FBI that this was a
9 stolen truck" -- and we heard a lot about that
10 truck -- and LaMorte said, "Absolutely not. I told
11 them it was rented from a place on Kingsland Avenue."

12 Did LaMorte know what he was talking about?

13 When Agent Boling took the stand, and much
14 to-do was made about nothing here, he was asked,

15 "Did you check out the truck?"

16 Agent Boling: "I sure did. I found out it
17 was rented from Krieger Truck Rentals on May 6, 1976."

18 Does LaMorte know what he is talking about?
19 Is he lying to you?

20 Then the question came at him:

21 "Isn't this a figment of your imagination?
22 In fact, you never spoke even to Manuel Fernandez,
23 don't know him at all?"

24 Then remember that Manuel-- withdrawn --
25 that Vincent LaMorte, while he is lying in that

1
2 hospital, describes Manuel Fernandez. That descrip-
3 tion was read to you.

4 Mr. Gilman: "Did you state to the government
5 on May 17 that you saw Manuel on Thursday?" and Manuel
6 was described as five foot six inches with a hooked
7 nose, black hair, and very sharp dresser.

8 Now, you have seen Manuel Fernandez during
9 the course of this trial. You be the judge of that
10 description. You be the judge of whether or not
11 Vincent LaMorte knew who he was talking about, of
12 his ability to describe people.

13 Now, admittedly there was one thing --
14 I emphasize the word "thing" -- that Vincent LaMorte
15 was not good at describing.

16 Talking about Jose Garcia's car. Ah hah.
17 You could all see defense counsel. "Here we have
18 something. We can get the jury's mind off his
19 description of people and events; if we throw that
20 car at them long enough they'll forget that ability."

21 First he said it's brown, yellow, then he
22 said it's a compact car, a small car, or a sports
23 car. And all he knew it was small.

24 What are we interested in here? Cars or
25 people? A car didn't rob the rug stores. A car

1
2 didn't load the rugs on the truck. A car didn't
3 drive the rugs back to Brooklyn. A car didn't
4 organize that entire scheme. People did.

5 When it comes to his description of people,
6 they can't touch him.

7 Mr. Rosenkranz harped on that car, but did
8 you hear him ask one word about the description that
9 he had given of Jose Garcia? He stayed away from
10 that. You're only supposed to remember the car.

11 I ask you, ladies and gentlemen, don't let
12 yourselves be led down that garden path. Keep to
13 the straight and narrow, of people and events. That
14 is what is material here.

15 Now let's get back to Vincent LaMorte's
16 ability to describe people. Let's see if he knows
17 what he's talking about.

18 Remember he told you how they all met that
19 morning in that bar in Brooklyn, these two defendants
20 included, and how the plans were made, particularized
21 plans, they weren't leaving it to happenstance as
22 to what was going to happen in Jersey.

23 Two people were to make it in, that is, to
24 go into the place and secure it, Barry and Chuck,
25 LaMorte was to follow, Jose was to bring the truck

around to the back.

Now, I ask you -- and these are the descriptions that he gave from the beginning, describing Barry and Chuck, the men who first entered. He tells you Barry's 6 feet tall, very slender, dark hair, black hair, a mustache, about 30 years old -- excuse me, he said about 25 to 30 years old, dressed in work clothes.

Chuck, short, 5-8, 5-9, stocky, 200 pounds, light blond hair.

Now, we go to Marianne Lariche, and the two people that she was really able to get a look at were the first two who entered, now identified to you as Barry Miller and Chuck Johnson.

What does she say about their description? She tells you one is taller than the other. The first one who entered, 5-10 to 6 feet tall; very slim, dark hair, black mustach, about 30 years old.

A figment of Vincent LaMorte's imagination, or is he right on the money again?

She tells us about the second man: shorter, 5-8, 5-9, stocky, I believe she used the word "Portly," thin and sandy hair, and also in work clothes.

1
2 Compare that with LaMorte's description. Is
3 he right on the money again, is he lying to you?
4 You be the judges. You are all reasonable men and
5 women. Consider this also: Why are you being
6 reasonable in considering all these facts in the
7 light of reason? Could Vince LaMorte have lied
8 about who participated in that robbery? Could he have
9 lied about Jose Garcia's participation?

10 Remember, he is looking to make a deal, and
11 he has to come forth with the truth, because the
12 FBI is checking him out, and don't think they don't
13 have a ready source to check against who he says
14 participated.

15 They can go right to Marianne Lariche.

16 We found out, too, that only she was able to
17 see clearly, and the others only a glimpse.

18 How was Vincent LaMorte to know that? What
19 if he had happened to pick out names and Marianne
20 could have blown this all to bits by saying,
21 "Those aren't the people."

22 Wasn't he in fact constrained to tell the
23 truth?

24 Imagine also if he had picked these names
25 out of a hat or used a dart board, and when it fell

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on the name Joseph Garcia or any other participants,
"I'll use that name."

Now, LaMorte during the course of that robbery
could only account for the whereabouts of the robbers.

Suppose he put somebody in there who wasn't
there and the FBI goes back and checks that person,
that person could say, "I was at the hospital that
day. I was at a funeral, I was at work."

No such thing.

MR. GILMAN: I must object.

Counsel is now making reference to other
defendants who are not in this case. There has
been no proof about them and whether or not they
were in a hospital or not, has not come out and
may not come out, I think no other reference should
be made about any other defendants not on trial.

THE COURT: That is covered in the Court's
charge. You are not to consider their absence or
their presence.

MS. GAINES: I am merely asking you to con-
sider logic of what someone is able to tell and how
constrained by the facts themselves someone
could come in and blow it apart, and I did.

While we're on the offense of the robbery

1
2 itself, remember how LaMorte tells you that Manuel
3 Fernandez fingered this job, he set it up, he told
4 them where to go for the rugs, and he told them it
5 will be an easy job, light touch, there will only
6 be two people there, a man and a woman.

7 What does Marianne LaRoche tell you?

8 Sure enough, when the first two individuals
9 come in, what are they concerned with? They want
10 to know where is the owner.

11 Isn't that the action of men who are expecting
12 someone else there, as they have been told by Manuel
13 Fernandez? They're looking hard for that second
14 individual, and she finally convinces them that he
15 is not there.

16 Also, LaMorte tells you that Manuel Fernandez
17 told him, "Go for the rugs in the safe. That's
18 where the valuable ones are."

19 After the robbery is announced, what does
20 Marianne LaRoche tell you?

21 That's one of the first things that they
22 wanted, "Give us the combination to the safe."

23 They're not leaving without that property in
24 the safe.

25 She is shaking so bad and is so terrified

1 she can't remember the number. They had to open it.

2 They went for the rugs in the safe, just as
3 Manuel Fernandez said, just as Vincent LaMorte told
4 you he had directed.

5 Let's look at Manuel Fernandez.

6 Now, LaMorte tells you how he says during this
7 meeting that "I know that owner, Mr. Kahn," names
8 him, "I have been in the store, know the women
9 there."

10 Now, what do Marianne LaRoche and Bob Kahn
11 tell you?

12 They know Manuel Fernandez. He has done
13 business there.

14 Could Vincent LaMorte have known that unless
15 Manuel Fernandez had told him?

16 Let's consider Manuel Fernandez even
17 further.

18 As you know, he is in the rug business,
19 quite knowledgeable, knows all the rug dealers
20 in oriental rugs -- forgive my pronunciation,
21 Sarouks, Kashghais, Kirmins -- forgive me, I may
22 be mixing up the names -- but he tells about these
23 people, their background, their merchandise, he is
24 familiar with all of this.

25 Now, remember we're dealing with oriental

1
2 rugs here. This is an exclusive market. It is
3 not your common, everyday market or garden variety
4 either.

5 Imagine somebody approaches you on the
6 street and, holding up this little piece of cloth
7 and said, "This is \$3,000, but it's bargain day.
8 I'll let you have it for half price, \$1500."

9 Would you buy it?

10 Believe me, I'm not minimizing the value of
11 this rug, and there has been no challenge as to
12 its value, but as ordinary laymen, not familiar
13 with these rugs, can you tell this value?

14 In order to steal these rugs, you have to
15 have a ready market for them. You have to have
16 somebody who has the contacts to sell them to
17 ready buyers.

18 Who has the contacts? Manuel Fernandez.

19 Again, is it a figment of Vincent LaMorte's
20 imagination?

21 Was he correct when he told you about
22 Fernandez's contact?

23 Fernandez in his own conversation with Chuck
24 goes into those contacts.

25 Ask yourselves when you go into that jury room

1
2 how many reasons you need to believe Vincent
3 LaMorte. How many times must it be shown to you,
4 because remember the government has a burden here to
5 prove these defendants guilty beyond a reasonable
6 doubt. Not beyond all doubt.

7 See what reasons you have to believe innocent
8 LaMorte. Let's examine some of the other reasons.

9 You remember Agent Kosedner got on the stand
10 and told you about the date and Ferrante, another
11 person found in possession of the stolen Oriental
12 rugs, how he was arrested on May 8, 1976, and what
13 does Agent Kosedner recover from his car?

14 And Ferrante's address book, which he subse-
15 quently turns over to Chuck Boling. What does
16 Agent Boling do with the date book after he
17 receives information from Manuel -- from Vincent La-
18 Morte? Compares it with what he finds in this book--
19 and you will have an opportunity -- and I urge you
20 to do so -- look at the book and examine it.

21 THE COURT: You have five minutes.

22 MS. GAINES: Page 1, what do you see --
23 excuse me -- page 2. Page 1 are names and addresses,
24 imagine. 535-2604, telephone number. Pillowry.

25 What do we know now? That's where Manuel

1
2 Fernandez works, that's the telephone number of that
3 job, Look right on the first page of names and
4 addresses, Manuel Fernandez.

5 Now, what does that tell you about the
6 importance of Manuel Fernandez to and affinity in
7 the scheme of this enterprise?

8 Who is his fence man? Who is his cash man?
9 You don't find the padrones up front. You find
10 Manuel.

11 Isn't that consistent with what Vincent
12 LaMorte tells you about the division of labor and
13 how they operated?

14 Manuel fingers the job, and Ferrante organizes
15 the crew and his Honor will charge you as to the
16 responsibilities of people who aid and abet, who
17 not necessarily take part in the act themselves.

18 Continuing to look in this book, sure enough,
19 what do you find of importance?

20 There is Manuel's name again. You have the
21 number of the Pillowry, and you have his last
22 address at 404 East 56th Street.

23 More important, you have the telephone
24 number, 688-6435.

25 What did the man from the telephone company

1
2 tell you about this telephone number? That is the
3 telephone number of the Castillon Room, right next
4 to Manuel's name and address.

5 What did Vincent LaMorte tell you?
6 That's where he first meet Manuel Fernandez in the
7 company of Ferrante and Schnitzer.

8 Is he worthy of belief? You be the judge,
9 and we continue on and sure enough, Vincent LaMorte
10 told you about Jose, who was from Jersey,

11 What do you find here? The name Jose,
12 Area Code 201, a Jersey area code. 854-3859.

13 You heard from that stand that was Jose
14 Garcia's telephone number.

15 You also find the name of Joe the Jew, and
16 it's been told to you that was the name on the
17 street for Joseph's Schnitzer and his number,
18 GR4-3053. The man who organized the crew has
19 the names and numbers.

20 What does that tell you about the reliability
21 of Vincent LaMorte?

22 Also other papers were recovered. Joseph
23 Schnitzer when he told you of the organization,
24 the planning, the meeting at the bar, the division
25 of labor, who was there, taking part? Joseph
Schnitzer.

MS. GAINEX (Cont'd): Lo and behold, on the

date of the arrest, -- and this is my final point, your Honor, -- on the date of the arrest, of La Morte and Ferrante, who walks up to that liquor store where they are storing the rugs?

Joe Schnitzer. Didn't he get the surprise of his life when he found the F.B.I. agents in there? But ask yourself what was Joe Schnitzer doing at that location if Vincent LaMorte wasn't correct about him? What was found on Joe Schnitzer? Again, telephone numbers of the other members of the conspiracy, Barry's name and number, Sonny, and you know Vincent LaMorte's nickname is Sonny, his name and number. Also, again, the number of Manuel Fernandez, his home number this time. And you can look at these numbers. Oh, also you can look at this, too.

MR. GILMAN: Excuse me, your Honor.

MS. GAINEX: An article --

THE COURT: I must object to showing papers taken from a person who is not in this case.

MS. GAINEX: Your Honor, I would object. They are in evidence.

MR. GILMAN: Your Honor is familiar with the situation concerning those papers.

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gr/bw

MS. GAINEX: It's in evidence.

THE COURT: It's in evidence.

MR. GILMAN: I'm going to object.

MS. GAINEX: I would ask that counsel not make speeches.

THE COURT: It's in evidence. All right.

MS. GAINEX: You can read this. It's in evidence. He has this article about oriental rugs. Also, -- we look through here. Name of Laurence Filano, his business card and you heard the testimony of Manuel Fernandez, not his testimony, rather his conversation that he had with Agent Boling about Filano and on the back, the Castillion Restaurant.

And finally, you have the card the morning after and what do we know about that establishment? It is run by Tommy Anavim. What do we know about Anavim? Bob Kahn told you, that is where the rest of the stolen rugs were recovered from. Sure enough, the back of this card you have various terms, so-ropes, (ph) casaggie (ph), I can't even pronounce them. I suggest you compare them with the list of rugs and their description given by Bob Kahn and you will come to the conclusion that these are oriental rug terms.

What is Joe Schnitzer doing with Tommy Anavim's

card if he is not involved, just as was stated by LaMorte? Is he worthy of belief? Again, does he know what he's talking about? Even Manuel Fernandez, even while admittedly trying to minimize his involvement, tells you that he was present when Fernandez -- when Ferrante's -- when Ferrante was selling the hot rugs to Ferrante on that night in that garage.

Now, you heard the testimony. You have heard the reasons to believe the things that back up Vincent LaMorte. Consider the circumstances as reasonable men and women. Consider it in the cold light of reality. As I say, you may not want Vincent LaMorte as your best friend or over to your house for dinner, but don't allow your passion to be inflamed by what he is instead of what he has to say. As his Honor instructed you, listen to a witness. You saw him on the stand. You observed him.

Did he know what he was talking about? Is his story backed up? And I suggest when you examine his testimony in that light, I submit you will have very little choice but to find the defendant, Manuel Fernandez, the defendant Jose Garcia, guilty as charged. Thank you.

THE COURT: All right. Mr. Gilman?

MR. ROSENKRANTZ: Mr. Gilman?

14 1
2 not guilty, as long as the jury does it for the
3 right reason, and that's all I'm asking you to do.
4 Thank you very much.

5 COURT: Miss Gainey.

6 Do you think you can do it within five to
7 ten minutes?

8 MS. GAINES: I don't think so.

9 May it please the Court, defense counsel,
10 and ladies and gentlemen of the jury again:

11 As the Court has indicated to you and counsel,
12 this part of the case is called the government's
13 rebuttal summation. It is the government's oppor-
14 tunity to cover some of the arguments made to you by
15 counsel. Not all of them, because not all of them
16 are worthy to be covered. Certain areas, however,
17 must be cleared up. Let's blow away the smoke.

18 You heard defense counsel talk about
19 LaMorte and that he hasn't done much jail time.
20 The reason he gave was because he has a couple
21 of good lawyers. And that's what you heard today,
22 a couple of good lawyers, and lawyers have the habit
23 of skimming over what they don't want you to know
24 about and emphasizing what they want to confuse
25 you about.

1 Let's deal with the people and the crime
2
3 that was committed. Let's deal with this car again
4
5 and put it into its perspective.

6 You heard a lot about that car. You heard
7
8 a lot about driving this route to Princeton, and
9
10 the impression that they took the Lincoln Tunnel
11
12 route.

13 You heard LaMorte say they took the Holland
14
15 Tunnel from Brooklyn. It's a different way from
16
17 going by way of the Lincoln Tunnel.

18 What difference does it make? Ask yourselves
19
20 how long it took him to get to Princeton.

21 Is there any doubt in your mind that a
22
23 robbery occurred in Princeton? Is there any doubt
24
25 in your mind that those rugs were transported
in interstate commerce back from Jersey to Brooklyn?

 Though we're dealing with carpets here,
they're not magic carpets, they didn't fly here
by themselves.

 So they went to Princeton and came back.
What difference does it make how long it took them?

 Again on this car--- you heard Mr. Rosen-
kranz say this man should know about cars. After
all, he owns this big Caddy convertible, giving

1
2 you an impression of a late model car.

3 Didn't you hear Vincent LaMorte? He has a
4 '65 Caddy. How many years are we talking about?
5 Twelve years ago. Yet he should be an expert on
6 cars.

7 Also, if you noticed, when he was asked
8 about Anthony Ferrante's car, the car that was
9 driving right in front of him on the day he was
10 arrested, that led him to the liquor store, he
11 forgot the year of that car, too, and that was
12 right in front of him, because Agent Kosedner told
13 you the year of that car. It was a 1969 car.

14 So Vincent LaMorte is not good with cars.
15 Imagine if he had come in here with detail to
16 detail down pat, with no mistakes, sharp cookie,
17 as the attorney would have you believe, wouldn't
18 you say to yourself, "Gee, he has memorized that
19 script," because that's what you do when you're
20 playing a role. You have no resources to draw on
21 of your own, and you have to memorize a script,
22 and actors do that when they're telling a made-up
23 tale.

24 When somebody is telling something from
25 real life, imagine yourself -- although this is

1 no joking situaiton -- I'm going to talk to you
2
3 about a joke -- when you tell a joke several times,
4
5 or one or more persons tells the same joke, you
6
7 may have it told in different ways, but that punch
8
9 line is always the same, that doesn't change, and
10
11 the punch line here is the individuals.

12
13 Now, again, with this car, you heard the
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15 testimony, that Jose Garcia indeed has a green
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17 Chevrolet registered to him, but the only testimony
18
19 you heard about what car he was driving on that day
20
21 was from LaMorte. No speculation. Ask yourselves
22
23 in your everyday experience how many people you
24
25 know drive other cars?

Wouldn't Jose Garcia have been a fool in
this broad daylight robbery to have taken his own
car to the scene of the crime? Anthony Ferrente
didn't.

Wouldn't he have been a fool to do that with
his license plate? This is broad daylight, with
people coming out of school.

If someone matches up that car and license
plate with Jose Garcia's number, his goose is
cooked, so when you are carrying out a well-
organized robbery, that culminated in this conspiracy

1 you don't make mistakes like that -- like taking
2 your own car.

3
4 Again, on Jose Garcia, ask yourselves what
5 Vincent LaMorte told you about him. Jose is from
6 Jersey, came down to the social club and played
7 cards, all right. And Mr. Chabay came in here.
8 He couldn't tell you much about the whereabouts
9 of Jose Garcia during the time of the robbery.
10 He could only tell you that he was there to 6:15.

11 Ask yourselves in your experience of people
12 who work night jobs, how many of them could you know
13 who moonlight on day jobs or vice versa? These
14 are hard times.

15 How much money is he making driving the news-
16 paper delivery truck? I suggest he was moonlighting
17 here, maybe not in a legitimate activity, but in
18 an illegitimate one.

19 Mr. Chabay tells you -- I'm sorry, Jose
20 Garcia's boss tells you he is an avid card player.

21 What does Vincent LaMorte tell you? He is
22 an avid card player.

23 Counsel would have you believe here--

24 THE COURT: They can't hear you.

25 MS. GAINNEY: It depends who of you believe

2 still that Jose Garcia is just picked out of a hat--

3 MR. ROSENKRANZ: I can't hear you.

4 MS. GAINNEY: I'm speaking as loudly as I can.

5 THE COURT: You only have about two or three
6 minutes left.

7 MS. GAINNEY: Is that the entire time that
8 I will have?

9 THE COURT: You have already had seven
10 minutes.

11 MS. GAINNEY: That he just picked Jose Garcia
12 out of a hat, and that because he wasn't one of the
13 boys, so to speak, that he was testifying against
14 him, and no one else was testified against.

15 You saw the grand jury testimony. You heard
16 Vincent LaMorte. He testified down the line. That
17 was the impression that was created here. Still
18 no reason given for why out of all the people in the
19 world -- how many people frequent that social club,
20 he would name Jose Garcia.

21 On one hand counsel tells you he is a bad
22 guy, and on the other hand he tells you he had an
23 attack of conscience about Jose Garcia and that's why
24 he minimizes his participation.

25 Wasn't he telling you like it was, down the

line, letting the chips fall where they may?

Sure he wanted to make a deal. As it was brought out that he was testifying in front of the sentencing judge. Is he going to lie in front of him?

Those are the things that you may consider.

Then with respect to Manuel Fernandez, remember it was said by Mr. Gilman he is not an investigator, more smoke. Thank God he is not. If he wants you to concentrate on the FBI investigation, first it's called sloppy, and then they're criticized for taking six months.

The agent knew where the truck came from. It was rented. Mr. Gilman wants him to run around and waste a lot of time, for what? He knew where it came from. Maybe he wanted him to check out the Long Island Carpet Company and the innuendo about their dealing in hot rugs.

I suggest if Jose Garcia wasn't one of the boys, Manuel Fernandez wasn't either.

Why did Vincent LaMorte have an attack of conscience about him? No attack of consciousness. He told it like it was.

Let's get to Manuel Fernandez. You don't

Gainey-rebuttal

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2 hear anything about a description about him, about
3 the knowledge of him. It's poo-pooed, his state-
4 ment.

5 I will agree with Mr. Milgram, "Oh, what a
6 tangled web we weave, when once we practice to
7 deceive." He makes it sound like that.

8 Ferante came up front. Oh, yes, I know
9 these people. Oh, yes, let me help you out.

10 See if you find anyone that told you any
11 different stories here.

12 LaMorte's testimony hasn't changed from
13 Day One on any material fact.

14 What does Fernandez say when he is first
15 questioned by the FBI and all this business how
16 his rights were given. They're damned if they do
17 and damned if they don't.

18 Trying to do the best thing, giving it in
19 English and Spanish. What criticism would have been
20 made. Let's see if he understands English and see
21 if he knows enough English to throw the blame
22 elsewhere.

23 This is a businessman dealing in high quality
24 expensive rugs. He sure knows how to phrase it in
25 English.

1 THE COURT: It's time to wind up.

2 MS. GAINAY: Let's consider his statement,
3 all right.
4

5 Ask yourselves why this unstanding individual,
6 this innocent man, is being told about all these
7 stolen rugs. Why is he asked to come in and
8 appraise, not just buy. Fernandez. He mentioned
9 other people, hot rugs.

10 He wanted you to believe not being a part of
11 this organization, part of this carefully planned
12 operation. Fernandez is going to go outside to an
13 independent source and get an appraisal of those
14 hot rugs.

15 Ask yourselves, is anyone going to be
16 included who is not a part of that entire operation?

17 Now, that's the logic. Ask yourselves when
18 you're looking at the phone book --

19 Just one final point: With respect to Jose
20 Garcia's number in that phone book, counsel would
21 have you believe he just told you about the fact
22 that the number was disconnected on April 30, 1976.
23 He didn't mention that that Jersey Bell Telephone
24 man didn't tell you that the number wasn't recon-
25 nected until May 7--

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2
3 MR. ROSENKRANZ: Objection; it was a
4 different number.

5 MS. GAINNEY: They didn't get a new number
6 until May 7th. Garcia didn't have telephone
7 service from April 30 to May 7, and Fernandez is
8 arrested on May 8. What chance did he have to get
9 Jose's new number? How does he contact Jose?
10 Hang out at that social club.

11 THE COURT: Your time is up.

12 MS. GAINNEY: May I just wind up?

13 THE COURT: Wind up.

14 MS. GAINNEY: And I suggest that the motive
15 that has been given to you is no different, to
16 testify but not falsely against these people, not
17 falsely against any of the names in that book,
18 specific people.

19 Now you have to go into that room and
20 deliberate. Based upon your common sense, not simply
21 for either side. And you have sworn if you in your
22 good conscience find that the defendants have not
23 been found guilty beyond a reasonable doubt, find
24 them not guilty. You have also sworn if you find
25 they are guilty beyond a reasonable doubt, you will
find them guilty. Now you have heard the facts of
the crime and justice is up to you. Thank you.

TRP:MG:sm
P. #763,433

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

76 CR 736

MANUEL FERNANDEZ,

Defendant.

- - - - - X

GOVERNMENT'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR A JUDGMENT OF A
ACQUITTAL OR A NEW TRIAL

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

MARILYN GAINES
Assistant U.S. Attorney
(Of Counsel)

PRELIMINARY STATEMENT

On May 3, 1977 the defendant Manuel Fernandez was convicted, after a jury trial, on Interstate Transportation of Stolen Property, Receipt of Stolen Property Transported in Interstate Commerce and Conspiracy, in violation of Title 18, United States Code, Sections 2314, 2315 and 371.

Prior to trial the defendant made a general request for any Brady material in the government's possession. The defendant, whose native tongue is Spanish, also made a request for the services of a court-appointed interpreter during trial. The court denied this request after determining that the defendant, who was represented by retained counsel, was not indigent and understood and spoke English well enough to understand and participate in the trial proceedings. The defendant now moves for a new trial or in the alternative for a judgment of acquittal on the grounds that (1) the government suppressed Brady material, and (2) that the court's denial of the assistance of a Spanish interpreter denied the defendant effective assistance of counsel.

3.

STATEMENT OF FACTS

The Government's case at trial established in pertinent the following facts:^{1/}

Vincent LaMorte, a co-conspirator of the defendant Fernandez, testified that he, along with four other individuals participated in the robbery of Kahn's Oriental Rug Store in Princeton, New Jersey on May 6, 1976.^{2/} A large quantity of antique Oriental rugs was stolen during the course of this robbery and subsequently transported from New Jersey to Brooklyn, New York. Although the defendant Fernandez had not participated in the actual robbery he had selected the victim store as the robbery target and participated in the planning of the robbery. LaMorte further testified that after the rugs were stolen, Fernandez was to provide buyers for these rugs and thereafter share in the proceeds from the sale of these items.

^{1/} Since the defendant Fernandez presented no defense these facts are for the most part uncontroverted.

^{2/} The four other individuals named as participants in the robbery were Bayey Miller, Jose Garcia, Charles Johnson and Anthony Ferrante. Joseph Schnitzer was also named as a co-conspirator.

4.

La Morte's testimony also established that the defendant Fernandez was a friend of Robert Kahn, the owner of the victim store and knew the store's location and its physical lay-out. Furthermore, during the planning of the robbery Fernandez had advised LaMorte and the other co-conspirators that Kahn kept the most valuable rugs in the safe and had cautioned them not to forget to take these rugs during the robbery. LaMorte further testified that the night before the robbery Fernandez had taken Ferrante and Schnitzer to the victim store (51). ^{3/}

Robert Kahn corroborated La Morte's testimony about Fernandez' friendship with Kahn and familiarity with his store when he testified that he knew the defendant Fernandez and had done business with Fernandez and Fernandez' partner Edward Shamash at Kahn's store in Princeton, New Jersey (239-241). Kahn further testified that Fernandez had last visited Kahn's shop in the latter part of 1974 (241-242). Finally, Kahn testified that Larry Forlano was

^{3/} The numerals in parantheses refer to pages of the trial transcript.

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a personal friend of his who also dealt in Oriental rugs, and that Larry Forlano and Manuel Fernandez knew one another.

(244) It was also established that Forlano had been in Kahn's shop in 1976. ^{4/}

Special Agent Charles Boling of the Federal Bureau of Investigation testified, inter alia, as to various statements and admissions made to him by the defendant Fernandez. Included therein was a statement made by Fernandez on November 3, 1976, wherein Fernandez stated he was acquainted with a Larry Forlano, whom he knew to be a friend of Robert Kahn. Agent Boling testified that Fernandez stated the following facts to Agent Boling about Forlano:

- A. Yes, on that same date, November 3rd, he [Fernandez] mentioned that Larry Forlano, F-O-R-L-A-N-O, was the owner of Lawrence Forlano Rugs on Madison Avenue. He had played a part in setting up of the theft of Robert Kahn's rugs.

^{4/} It should be noted that the defendant Fernandez' attorney strenuously objected to Kahn's testimony linking Forlano and Fernandez. We submit that the reason the defense tried to prevent such testimony was to overcome the inference that Fernandez was aware of that valuable rugs were kept in the safe in Kahn's store because of information received from Forlano.

6.

He mentioned that Forlano was a partner of Shamash and that also he was a very good friend of Kahn. That is Robert Kahn. And they both knew all the merchandize Mr. Kahn had at his store and Forlano had been at Kahn's shop on numerous occasions recently and was always speaking of his inventory.

Q. Whose inventory?

A. Of Mr. Kahn's inventory. (339)

Finally, Agent Boling testified that Fernandez had also admitted knowing both Joseph Schnitzer and Anthony Ferrante, and stated to Agent Boling that these two had taken him some six months ago to a location in Brooklyn to appraise some rugs. Upon arriving in Brooklyn they were met at this location by Tommy Anavim., ^{5/} and it was Fernandez' belief Ferrante was attempting to sell these rugs to Anavim.. Fernandez further admitted knowing the rugs were "hot" but emphasized he had not stolen them. (337-338).

^{5/} It was developed through the testimony of Robert Kahn that he was present when Tommy Anavim.'s home was searched and Anavim. was arrested in possession of some of the rugs stolen from Kahn's shop on May 6, 1976. (227-229).

POINT I

THE UNDISCLOSED INFORMATION
WAS NOT EXCULPATORY, DID NOT
RENDER LAMORTE'S TESTIMONY
PERJURIOUS AND DOES NOT REQUIRE
A NEW TRIAL

The defendant brings this motion for a new trial essentially on grounds of "newly discovered evidence". The allegation is that the Government violated its obligations under Brady v. Maryland, 373 U.S. 83 (1963) by deliberately failing to disclose to the defendant, pursuant to its pre-trial request for any Brady material, the fact that there was no safe in Kahn's Oriental Rug Store in 1974, i.e. during the period the defendant Fernandez was last known^{6/} to have visited that store. The defense arbitrarily concludes from the fact that there was no safe in those premises in 1974, that it would have been impossible for Fernandez to be aware of its existence in 1976, and, therefore LaMorte committed perjury when he testified that Fernandez told him that the most valuable rugs in Kahn's were kept in the safe and to be

^{6/} We emphasize the word known because 1974 refers to the last time Robert Kahn was aware that Fernandez was at his store. The testimony of Vincente LaMorte revealed that Fernandez had gone to that store on the night prior to the robbery.

sure to take those rugs. ^{7/} In the course of this convoluted reasoning the defense conveniently overlooks several important factors:

(1) The defendant Fernandez's obvious familiarity with Kahn's store and its inventory through information received from Larry Forlano who had recently frequented those premises, (2) Fernandez's covert visit to Kahn's shop the night prior to the robbery and (3) Fernandez's own knowledge that there was no safe in Kahn's in 1974. It is the Government's position that this allegedly undisclosed information was neither exculpatory as defined by Brady v. Maryland, supra, 373 U.S. 83; nor was it inconsistent with LaMorte's testimony so as to render that testimony perjurious.

In Brady v. Maryland supra, 373 U.S. at 87 the Supreme Court held that suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where the evidence is material either to guilt or punishment, irrespective of the prosecutor's good

^{7/} It is important to note that this was all that LaMorte said about Fernandez's knowledge of the safe. LaMorte never stated that Fernandez had told them where the safe was in the store, what type of safe was involved, or that he [Fernandez] had seen the safe.

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or bad faith. The term "materiality" as used in Brady clearly describes evidence of greater value than that which is merely "favorable" to the accused, Giglio v. United States, 405 U.S. 150 (1971); United States v. Pfingst, 490 F.2d 262, 277 (2d Cir. 1973), cert. denied, 417 U.S. 919 (1974). It must be the type of evidence which "if made available would tend to exculpate him [the defendant] or reduce the penalty". Brady v. Maryland, supra, 373 U.S. at 87.

Under the case law following the Brady decision two general categories of material required to be turned over under the Brady rule have developed: (a) material which tends to be exculpatory, and (b) material which may be used to impeach or discredit government witnesses. See e.g. Gates v. Maryland, 386 U.S. 66 (1967); United States v. Miller, 411 F.2d 825 (2d Cir. 1969). Thus, with respect to impeachment the Government must reveal promises of leniency or immunity for its witnesses, Giglio v. United States, supra, 405 U.S. 150 United States v. Pfingst, supra, 490 F.2d 262. Likewise, the government must disclose the prior criminal record or other prior material acts of

misconduct of its witnesses United States v. Rosner, 516 F.2d 269 (2d Cir. 1975), United States v. Slijo, 514 F.2d 1357 (2d Cir. 1975); United States v. Fried, 486 F.2d 201 (2d Cir. 1973) cert. denied, 416 U.S. 983 (1974). ^{8/}

Since there can be no serious contention that the undisclosed information complained of in the instant case falls into the category of impeachment evidence as outlined above, the only question is whether this information was exculpatory. In Moore v. Illinois, 408 U.S. 787, 794 (1972) the Supreme Court restricted the Government's obligation of turning over Brady material to require only revelation of exculpatory material which is "material either to guilt or punishment". On this question of whether allegedly exculpatory evidence is material to guilt or punishment where, as in the instant case, only a general request for "all Brady material" is made, the Supreme Court stated in the recent case of United States v. Agurs, 427 U.S. 97, 107 (1976):

^{8/} In the instant case the defense was provided with a wealth of impeachment material against LaMorte which it fully exploited before the jury, since LaMorte testified as an accomplice witness with several prior convictions and a receipt of immunity in other federal crimes.

" - - - If there is a duty to respond to a general request of that kind, it must derive from the obviously exculpatory character of certain evidence in the hands of the prosecutor. [Emphasis added]. The mere possibility that an item of undisclosed information might have helped the defense or might have affected the outcome of the trial does not establish materiality in the constitutional sense."

The Second Circuit in discussing Agurs made the following observations:

"The thrust of United States v. Agurs, 427 U.S. 97 (1976) is that in the context of the entire record, the omitted evidence must raise a reasonable doubt as to the defendant's guilt." United States v. Stassi, 544 F.2d 572. (2d Cir. 1976).

To put it very simply the Government is not required to disclose all its evidence, however insignificant, to the defense, nor is it required to disclose evidence which appears irrelevant. United States v. Bowles, 488 F.2d 1307 (D.C. Cir. 1973), cert. denied, 415 U.S. 991 (1974).

Furthermore, it must be noted that the Government is not obliged under Brady to furnish the defendant with information he already has or with any reasonable diligence he can obtain himself. United States v. Stewart,

513 F.2d 957 (2d cir. 1975); Williams v. United States, 503 F.2d 995 (2d Cir. 1974); United States v. Brawer, 496 F.2d 703 (2d Cir.), cert. denied, 419 U.S. 1051 (1974); United States v. Tramunti, 500 F.2d 1334, 1349-50 (2d Cir.), cert. denied, 419 U.S. 1079 (1974). As this Circuit pointed out in United States v. Ruggerio, 472 F.2d 599, (2d Cir. 1973):

"The purpose of the Brady rule is not to provide the defendant with complete disclosure of all evidence in the government's file which might conceivably assist him in the preparation of his defense, but to assure he will not be denied access to exculpatory evidence known to the government but unknown to him."

The concept of suppression as defined in Brady implies- that the government has information in its possession of which the defendant lacks knowledge and which the defendant would benefit from knowing. United States v. Natale, 526 F.2d 1160 (2d Cir. 1970), cert. denied, 425 U.S. 950 (1976). See also Gates v. Maryland, supra, 386 U.S. at 96.

The undisclosed evidence complained of in the instant case doesn't fulfill any of the above-enumerated criteria, i.e. it is not exculpatory, it is not material

to the defendant's guilt or innocence, it does not impeach the credibility of a government witness, it does not raise a reasonable doubt as to the defendant's guilt and finally, it was known to the defendant.^{9/} Whether or not Kahn's shop had a safe at the time of Fernandez's last known visit to that establishment is irrelevant to the defendant's knowledge that valuable rugs were kept in the store's safe in 1976 when viewed in relation to the defendant's admission of receiving information about those premises from Larry Forlano, who was a good friend of the owner of that store and frequented the store during the period of time the safe was in the store. The fact that there was no safe in Kahn's store in 1974 is totally irrelevant to the defendant's aiding and abetting in the receipt of stolen property when viewed in relation to the defendant's admission that he was present at the garage where the rugs were stored after the robbery

^{9/} It is fundamental that the alleged "newly discovered evidence" on a motion for a new trial must have been discovered after the trial and not discoverable with due diligence, during or before. 2 Wright, Federal Practice and Procedure §557 p. 516; 8A Moore, Federal Practice §33.03 [1] p. 33.13; United States v. Natelli, F.2d, Docket No. 76-1494 (2d Cir. Slip. op. 920, decided March 28, 1977); United States v. Stofsky, 527 F.2d 237, 244 (2d Cir. 1975), cert. denied, U.S., 97 S.Ct. 65, 66 (1976), United States v. Birnbaum, 421 F.2d 993 (2d Cir. 1970).

for the purpose of appraising those rugs which he believed to be stolen. Finally, the lack of a safe in Kahn's store in 1974 was not inconsistent with LaMorte's testimony that Fernandez had selected that store as the robbery target and told LaMorte and the other conspirators that the most valuable rugs were kept in the safe. The thrust of LaMorte's testimony was the knowledge the defendant Fernandez had of Kahn's shop and its inventory, not how and when Fernandez had acquired that information.^{10/} Even if the jury had been aware that there was no safe in Kahn's in 1974, this would have in no way excluded the reasonable inference that Fernandez had learned from a third party that Kahn kept his most valuable rugs in the safe. Nor should the fact be overlooked, that on the night prior to the robbery, Fernandez took Joseph Schnitzer and Anthony Ferrante

^{10/} We suggest that the fact that there was no safe in Kahn's in 1974 would have been of no more importance to the jury than the fact that Fernandez had last been at Kahn's shop to Kahn's knowledge in 1974 (242). The defendant's attorney never presumed to make the pointless argument to the jury that the defendant Fernandez could not have been presently familiar with Kahn's merchandise since Fernandez hadn't been in Kahn's store since 1974. Yet he now argues that the analogous argument that Fernandez couldn't have known of the goods in the safe because there was no safe there in 1974 would have created a reasonable doubt in the minds of the jurors.

to Kahn's, although concededly there was no evidence presented as to what observations Fernandez made concerning that store on that occasion.

Finally, the defendant Manuel Fernandez unquestionably was aware of the fact that there was no safe in Kahn's shop in 1974, eventhough defendant's counsel now attempts to convince the court that he [counsel] was unaware of this fact because throughout the entire trial he couldn't understand his client when the defendant attempted to tell him of that factor. The Government questions whether we are in fact dealing with a question of lack of communication as opposed to one of past-conviction hindsight in light of the fact that the instant trial spanned a period of seven days, and LaMorte's testimony concerning the rugs in the safe was taken on the very first day of testimony. Thereafter, there was both a luncheon recess and an overnight adjournment in the trial before defendant's counsel completed his cross-examination of the witness LaMorte. It seems somewhat incredible that during this entire seven day period, including periods of adjournment, that the defendant

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Fernandez was unable to make his attorney understand that there was no safe in the store in 1974, yet, miraculously, immediately after the trial the communication barrier disappeared, and the defendant was able to 11/ communicate this fact to his attorney.

11/ We ask the court to note that the instant trial ended about 9:00 p.m. on May 3, 1977, and the following morning the defendant's attorney communicated to the court his intention to move for a new trial on the grounds herein discussed.

POINT TWO

THE COURT DID NOT ABUSE ITS
DISCRETION BY NOT APPOINTING
AN INTERPRETER FOR THE DEFEND-
ANT

In what the Government suggests is nothing more than an attempt to overcome the fact that the defendant Fernandez was aware that there was no safe in Kahn's shop in 1974, the defendant's attorney contends that he was unable, throughout the entire trial, to communicate with his client, whose native tongue is Spanish, and that the Court's refusal to appoint an interpreter for the defendant denied the defendant effective assistance of counsel. We contend that the court properly exercised its discretion in not appointing an interpreter for the defendant upon its finding that the defendant understood and spoke English well enough so as not to require the services of an interpreter.

There is no constitutional right, as such, requiring the assistance of a court-appointed interpreter to supplement an accused's right to counsel. Perovich v. United States, 205 U.S. 89 (1907); United States v.

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Desist, 384 F.2d 889, 902 72d Cir. 1967⁹, aff'd 394 U.S. 244 (1968); Cervantes v. Cox, 350 F.2d 855 (10th Cir. 1965). However, the courts have recognized that where the defendant in a criminal proceeding is so unfamiliar with the English language that he cannot communicate his statements or testimony or cannot understand the testimony of others involved in the proceedings, he is entitled as a matter of due process and the right to confrontation to be furnished with the assistance of an interpreter. United States ex rel. Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970); United States ex rel. Navarro v. Johnson, 365 F. Supp. 676 (D.C. Pa. 1973).^{12/}

The courts follow the general rule that the appointment of an interpreter for a defendant is a matter resting within the sound discretion of the trial court,

^{12/} It should be noted that in every case holding on due process and confrontation grounds that the defendant had a right to a court-appointed interpreter two elements have been present, i.e. (a) the defendant was indigent and (b) the defendant unquestionably could neither speak or understand English. Neither of these factors is present in the instant case. The defendant Fernandez was represented by retained counsel, and there was no showing made of his inability to engage an interpreter other than his attorney's bald assertion that he believed the defendant couldn't afford one (3). In any event whether or not this defendant could or could not afford to hire an interpreter is not the issue, since based on the court's observations and direct contact with the defendant, it was determined that this defendant understood and spoke English.

whose determination will not be disturbed where the record discloses no abuse of discretion. Perovich v. United States, supra, 205 U.S. 86; United States v. Desist, supra, 384 F.2d 889; United States v. Sosa, 379 F.2d 525 (7th Cir.); cert. denied, 389 U.S. 845 (1967); Suarez v. United States, 309 F.2d 709 (5th Cir. 1962). ^{13/} The trial court does not abuse its discretion by failing to appoint an interpreter where the court determines that the foreign-speaking accused is sufficiently conversant with the English language to understand and participate in the proceedings. Perovich v. United States, supra 205 U.S. at 91; United States v. Sanchez, 483 F.2d 1052 (2d Cir. 1973); United States v. Carrion, 488 F.2d 12 (1st Cir. 1973), cert. denied 416 U.S. 907 (1974); United States v. Barrios, 457 F.2d 680, 682 (9th Cir. 1972); United States v. Smith, 464 F.2d 194 (10th Cir. 1972), cert. denied 409 U.S. 1066; United States v. Rodriguez, 424 F.2d 205, 206 (4th Cir. 1970), cert. denied, 400 U.S. 841. As it was aptly stated in United States v. Carrion, supra 488 F.2d at 14-15:

^{13/} It may be noted that Rule 28(b) of the Federal Rules of Criminal Procedure, simply provides that:
The Court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. [Emphasis supplied].

Because the determination is likely to hinge upon various factors, including the complexity of the issues and testimony presented during the trial and the language ability of the defendant's counsel, considerations of judicial economy would dictate that the trial court, coming into direct contact with the defendant, be granted wide discretion in determining whether an interpreter is necessary. [Citations omitted].

Finally, the trial court's determination of the defendant's ability to speak and understand English need not involve an elaborate process. "Normally the court should be able to decide whether interpreters are necessary by questioning and observing the defendant." Chang & Aranjó, Interpreters for the Defense, 63 California L. Rev. 801 (May 1975).

In the instant case the court correctly determined that the defendant both understood and spoke English sufficiently well enough to understand and participate in the proceedings. Although the defendant spoke in accented English, it certainly did not sound like the "pure gibberish" his attorney now self-servingly classifies

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it to be (Defendant's Supplemental Memorandum, Page 3). ^{14/}

The Court had the benefit of personally speaking to and questioning the defendant on the record in English. During the course of this colloquy it was determined from the defendant that he had been in the United States some twelve years, had studied English for a short period of time and worked with Americans (5-6). Furthermore, the defendant's conversance with the English language was underscored by his visible reactions to the testimony of the English-speaking witnesses and frequent comments to his attorney during the course of that testimony.

Counsel urges that even if the defendant could understand and speak English, that he was unable to effectively represent his client because "counsel at no time during the trial understood fully or partly what the defendant was saying to him." [Defendant's Supplemental Memorandum, page 4]. The reality of what occurred in the courtroom during the course of the trial belies that contention. We ask the court to note that during

14/ We would ask the court to make note of the fact that throughout the entire trial period the defendant Fernandez conversed in English to virtually everyone connected with the case, including not only his attorney, but also the Assistant U.S. Attorney, FBI agents and his co-defendant's attorney.

these proceedings counsel was observed speaking with his client and since there is no suggestion that the attorney spoke Spanish, it follows that these conversations took place in English.

Finally, during jury selection the defendant was supplied with an interpreter, yet minimal use was made of her services at that time. More importantly at no time was this interpreter used to interpret conversations between the defendant and his attorney, and even with the interpreter present they conversed in English (See attached affidavit of Libya Clancy). Therefore, counsel's contention that he could not understand his client is totally without merit.

Where a defendant has some knowledge of English, as was the case here, and he is reasonably able to converse in English, it is within the discretionary power of the trial court whether or not to appoint an interpreter Perovich v. United States, supra, 205 U.S. 89, Suarez v. United States, supra, 309 F.2d 709. Although the defendant here did not always speak grammatically correct English, it is still obvious from the record and the court's

observations of the defendant that he had sufficient command of the English language to understand the proceedings and to convey his thoughts.

CONCLUSION

The defendant's motion for a new trial or in the alternative for a judgment of acquittal should, in all respects, be denied.

Dated: Brooklyn, New York
July , 1977

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

MARILYN GAINES
Assistant U.S. Attorney
(Of Counsel)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

MANUEL FERNANDEZ,

76 CR 736

Defendant.

- - - - - X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:
EASTERN DISTRICT OF NEW YORK)

LIBYA CLANCY, being duly sworn, deposes
and says:

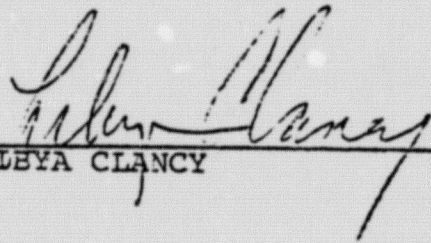
1. That she is an interpreter fluent in the Spanish language whose services are employed in official court proceedings in the United States District Court for the Eastern District of New York to translate English into Spanish and Spanish into English.
2. That on or about April 26, 1977 the Government requested her services as an interpreter for the defendant Manuel Fernandez during the selection of the jury in the case of United States of America v. Manuel Fernandez, 76 CR 736.
3. That during the selection of the jury in the above-captioned case she translated very little of the proceedings into Spanish for the defendant Fernandez because the defendant indicated to her that he understood the proceedings in English and for the most part he did not require her services.

-2-

4. That during the selection of the jury in the above-captioned case the defendant at times conversed with his attorney in English and at no time was she ever called upon by either the defendant or his attorney to translate conversations between the two of them.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
July 12, 1977


LIBBY CLANCY

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244

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

MARIE L. BARCOLOTTI

being duly sworn, says that on the 15th
day of July, 1977

I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a MEMORANDUM OF LAW AND AFFIDAVIT

of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper

directed to the person hereinafter named, at the place and address stated below:

Honorable Mark A. Constantino	Samuel W. Gilman, Esq
United States District Judge	481 Broadway
Eastern District of New York	New York, New York 10013
325 Cadman Plaza East	
Brooklyn, New York	

Sworn to before me this
day of

James J. [Signature]

AFFIDAVIT OF PERSONAL SERVICES

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

being duly sworn, says that he is employed in
the office of the United States Attorney for the Eastern District of New York. That on
the day of he served a true copy of the annexed

on the office of

attorney for herein, located at

Borough of City of New York by

leaving a true copy of same with his clerk or other person in charge of said office.

Sworn to before me this
day of

244
A
SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the _____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

, 19

United States Attorney,
Attorney for _____

To:

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the _____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,

, 19

United States Attorney,
Attorney for _____

To:

Attorney for _____

Action

No.

UNITED STATES DISTRICT COURT
Eastern District of New York

-- Against --

United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within is hereby admitted.

Dated: _____, 19

Attorney for _____

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

Dolores Byrd

being duly sworn,
deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on 8th day of February 1978 he served a copy of the within
Brief and Appendix for the Appellee

by placing the same in a properly postpaid franked envelope addressed to:
Samuel W. Gilman

401 Broadway

New York, New York 10003

and deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Court House, 225 Cadman Plaza East,
Borough of Brooklyn, County
of Kings, City of New York.

Dolores M. Byrd

Sworn to before me this

8th day of February 1978
Barbara Allen

BARBARA A. ALLEN
Notary Public, State of New York
No. 24-6046324
Qualified in Kings County
Commission Expires March 30, 1979